R68. Agriculture and Food, Plant Industry.
R68-2. Utah Commercial Feed Act Governing Feed.
R68-2-1. Authority.

Promulgated under authority of Section 4-12-3.

R68-2-2. Definition and Terms.

A. The names and definitions for commercial feeds shall be the Official Definition of Feed Ingredients adopted by the Association of American Feed Control Officials, except as the Commissioner designates other wise in specific cases.

B. The terms used in reference to commercial feeds shall be the Official Feed Terms adopted by the AAFCO, except as the Commissioner designates otherwise in specific cases.

C. The following commodities are declared exempt from the definition of commercial feed, under the provisions of Section 4-12-2: hay, straw, stover, silages, cobs, husks, and hulls when unground and when not mixed or intermixed with other materials: provided that these commodities are not adulterated within the meaning of Section 4-12-2.

R68-2-3. Registration of Products.

A. All commercial feeds and feed ingredients except those specifically exempted herein shall be officially registered annually with the Utah Department of Agriculture and Food.

1. Application for registration shall be made to the Department upon forms prescribed and provided by the Department and the applicant shall furnish all information requested thereon, being totally responsible for the accuracy and completeness of all required information.

2. A registration fee per product, determined by the department pursuant to Subsection 4-2-2(2) shall be paid by the applicant annually.

3. Each registration is renewable for a period of one year upon payment of the annual renewal fee per product, determined by the department pursuant to Subsection 4-2-2(2) which shall be paid on or before December 31 of each year. If the renewal of a commercial feed or feed ingredient registration is not filed prior to January 1 of any one year, an additional fee of $5.00 per product shall be assessed and added to the original registration fee and shall be paid by the applicant before the registration renewal for that commercial feed or feed ingredient shall be issued.

4. Whenever the name of a feed product is changed or there are changes in the product ingredients, a new registration shall be required. Other labeling changes shall not require registration, but the registrant shall submit copies of all changes to the Department as soon as they are effective. A reasonable time may be permitted to dispose of properly labeled stocks of the old product.

B. Any person who distributes customer-formula feed shall obtain a permit annually from the Department before distribution of such feeds.

1. Application for a customer-formula feed distribution permit shall be made to the Department upon forms prescribed and furnished by the Department accompanied by the annual renewal fee of $50.00.

2. Each renewal fee shall be paid on or before December 31 of each year. If the renewal fee for customer-formula feed distribution permit is not filed prior to January 1 of any one year, an additional fee of $5.00 shall be assessed and added to the original permit fee and shall be paid by the applicant before the permit shall be issued.

R68-2-4. Commercial Feed Labeling.

Commercial feed, other than customer-formula feed, shall be labeled with the information prescribed in this rule on the principal display panel of the product in the following general format.

A. Net weight.

B. Product name and brand name if any.

C. If a drug is used:

1. The word "medicated" shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name.

2. The purpose of medication (claim statement).

3. An active drug ingredient statement listing the active drug ingredients by their established name and the amount in accordance with Subsection R68-2-7-D.

4. The required directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by Section R68-2-9, appear elsewhere on the label.

D. Purpose statement

1. The statement of purpose shall contain the specific species and animal class(es) for which the feed is intended.

2. The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, specie and purpose while being consistent with the category of animal class defined, which may include but not limited to including the weight range(s), sex or ages of the animal(s) for which the feed is manufactured.

3. The purpose statement may be excluded from the label if the product name includes a description of the species and animal class(es) for which the product is intended.

4. The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specification are provided by the end user.

5. The purpose statement of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products or molasses products may exclude the animal class and species and state "For Further Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds.

E. The guaranteed analysis of the feed shall include the following items, unless exempted in Section R68-2-4, and in the order listed:

1. Minimum percentage of crude protein.

2. Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required in Section R68-2-7.

3. Minimum percentage of amino acids when required by animal class or specie.

4. Minimum percentage of crude fat.

5. Maximum percentage of crude fiber.

6. Maximum percentage of acid detergent fiber when

required by animal class or specie.

7. Maximum percentage of moisture in pet foods.

8. Minerals, to include, in the following order: (a) minimum and maximum percentages of calcium (Ca), (b) minimum percentage of phosphorus (P), (c) minimum and maximum percentages of salt (NaCl) and sodium, and (d) other minerals.

9. Vitamins in such terms as specified in Section R68-2-7.

10. Total sugars as invert on dried molasses products or products being sold primarily for their sugar content.

11. Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, International Units, etc.) are listed in a sequence which provides a consistent grouping of the units of measure.

12. Exemptions.

a. Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than 6 1/2% of Calcium, Phosphorus, Sodium and Chloride and does not serve as a principal source of that mineral to the animal.

b. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.

c. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.

F. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements.

1. The name of each ingredient as defined in the Official Publication of the Association of American Feed Control Officials, common or usual name, or one approved by the Commissioner.

2. Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that:

a. When a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label.

b. The manufacturer shall provide the feed control officials, upon request, with a list of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state.

3. The registrant may affix the statement, "Ingredients as registered with the State" in lieu of the ingredient list on the label. The list of ingredients must be on file with the Department. This list shall be made available to the feed purchaser upon request.

G. Name and principal mailing address of the manufacturer, registrant, or person responsible for distributing the feed.

H. The lot number or batch number shall be on each label and may be the date the feed product was manufactured.

I. Commercial Livestock Feed Labeling requirements.

1. Swine formula feeds.

Animal classes: Pre-starter - 2 to 11 pounds, Starter - 11 to 44 pounds, Grower - 44 to 110 pounds, Finisher (market) 110 to 242 pounds, gilts, sows and adult boars, lactating gilts and sows.

Guaranteed Analysis, Swine complete feeds and supplements, (all animal classes).

Minimum percentage of crude protein, lysine and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum selenium in parts per million (ppm). Minimum zinc in parts per million (ppm).

2. Poultry Feeds, Layers, Broilers, and Turkeys.

Animal classes:

a. Layers: - chickens that are grown to produce eggs for food, i.e., table eggs. Starting/growing - from day of hatch to approximately 10 weeks of age. Finisher - from approximately 10 weeks of age to time first egg is produced. (Approximately 20 weeks of age). Laying - from time first egg is laid throughout the time of egg production. Breeders - chickens that produce fertile eggs for hatch replacement layers to produce eggs for food, table eggs, from time first egg is laid throughout their reproductive cycle

b. Broilers - chickens that are grown for human food. Starting/growing - from day of hatch to approximately 5 weeks of age. Finisher - from approximately 5 weeks of age to market (42- to 52 days). Breeders - hybrid strains of chickens whose offspring are grown for human food, (broilers), any age and either sex.

c. Broilers, Breeders - chickens whose offspring are grown for human food (broilers). Starting/growing - from day of hatch until approximately 10 weeks of age. Finishing - from approximately 10 weeks of age to time first egg is produced, approximately 20 weeks of age. Laying - fertile egg producing chickens (broilers/roasters) from day of first egg throughout the time fertile eggs are produced.

d. Starting/growing - Turkeys that are grown for human food from day of hatch to approximately 13 weeks of age (females)and 16 weeks of age (males). Finisher - Turkeys that are grown for human food, females from approximately 13 weeks of age to approximately 17 weeks of age; males from 16 weeks of age to 20 weeks of age, (or desired market weight). Laying - Female turkeys that are producing eggs; from time first egg is produced, throughout the time they are producing eggs. Breeder - Turkeys that are grown to produce fertile eggs, from day of hatch to time first egg is produced (approximately 30 weeks of age), both sexes.

Guaranteed analysis: Poultry complete feeds and supplements. (all animal classes): Minimum percentage of crude protein, lysine, methionine and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

3. Beef cattle formula feeds: Animal classes; calves, birth

to weaning. Cattle on Pasture (may be specific as to reproduction stage; e.g. stocker, feeder, replacement heifers, brood cows, bulls, etc.)

a. Guaranteed analysis; Beef complete feeds and supplements, (all animal classes). Minimum percentage of crude protein. Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added. Minimum percentage of crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum percentage of potassium. Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

b. Guaranteed analysis; Beef mineral feeds (if added). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt. Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum percentage of magnesium. Minimum percentage of potassium. Minimum copper, selenium, and zinc in parts per million (PPM). Minimum vitamin A, other than precursors of vitamin A in International Units per pound.

4. Dairy formula feeds: Animal classes; Veal milk replacer - milk replacer to be fed for veal production. Herd milk replacer - milk replacer to be fed for herd replacement calves. Starter - approximately 3 days to 3 months. Growing heifers, bull, and dairy beef, (a.) grower 1 - 3 months to 12 months of age, (b) grower 2 - more than 12 months of age. Lactating dairy cattle. Non-lactating dairy cattle.

a. Guaranteed analysis; Veal and herd replacement milk replacer. Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

b. Guaranteed analysis: Dairy cattle complete feeds and supplements; Minimum percentage of crude protein. Maximum percentage of non-protein nitrogen (NPN) when added. Minimum percentage of crude fat. Maximum percentage of crude fiber. Maximum percentage of acid detergent fiber (ADF). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum selenium in parts per million (PPM). Minimum vitamin A, other than precursors of vitamin A, in International Units per pound

c. Guaranteed analysis: Dairy mixing and pasture mineral with vitamins (if added). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt. Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum guarantee. Minimum percentage of magnesium. Minimum percentage of potassium. Minimum selenium in parts per million (ppm). Minimum vitamin A, other than the precursors of vitamin A, in International Units per pound.

5. Equine formula feeds: Animal classes; Foal, Mare, Breeding, Maintenance. Guaranteed analysis; Equine complete feeds and supplements (all animal classes). Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum copper, selenium and zinc in parts per million (ppm). Minimum vitamin A, other than the precursors of vitamin A, in International Units per pound (if added). Guaranteed analysis for Equine Mineral Feeds (all animal classes). Minimum and maximum percentage of calcium, minimum percentage of phosphorus, minimum and maximum percentage of salt (if added), minimum and maximum percentage of sodium shall be guaranteed only when the total sodium exceeds that furnished by the maximum salt guarantee. Minimum copper, selenium and zinc in parts per million (ppm), minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added)

6. Goat and Sheep formula feeds: Animal classes; starter, grower, finisher, breeder, lactating. Guaranteed analysis; Goat and Sheep complete feeds and supplements (all animal classes). Minimum percentage of crude protein. Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added. Minimum percentage of crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum and maximum copper in parts per million (PPM) (if added, or if total copper exceeds 20 ppm). Minimum selenium in parts per million (ppm). Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

7. Duck and Geese formula feeds: Animal classes; Ducks, starter - 0 to 3 weeks of age, grower - 3 to 6 weeks of age, finisher - 6 weeks to market, breeder/developer- 8 to 19 weeks of age, breeder-22 weeks to end of lay. Geese, starter-0 to 4 weeks of age, grower-4 to 8 weeks of age, finisher-8 weeks to market, breeder/developer-10 to 22 weeks of age, breeder-22 weeks to end of lay. Guaranteed analysis: duck and geese complete feeds and supplements (for all animal classes). Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

8. Fish complete feeds and supplements. Animal species shall be declared in lieu of animal class; trout, catfish, and other species. Guaranteed analysis: fish complete feeds and supplements; Minimum percentage of crude protein and crude fat. Maximum percentage of crude fiber. Minimum percentage of phosphorus.

9. Rabbit complete feeds and supplements. Animal classes, grower-4 to 12 weeks of age, breeder-12 weeks of age and over. Guaranteed analysis, Rabbit complete feeds and supplements(all animal classes). Minimum percentage of crude protein and crude fat. Minimum and maximum percentage of crude fiber (the maximum crude fiber shall not exceed the minimum by more than 5.0 units). Minimum and maximum percentage of calcium. Minimum percentage of phosphorus. Minimum and

maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee. Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

10. Other feeds shall include the following items in the order listed (unless exempted). The required guarantees of grain mixtures with or without molasses and feeds other than those described shall include the following items, unless exempted and in the order listed: Animal class(es) and species for which the product is intended. Guaranteed analysis; Minimum percentage of crude protein. Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required. Minimum percentage of crude fat. Maximum percentage of crude fiber. Minerals in formula feeds, to include in the following order. Minimum and maximum percentages of calcium. Minimum percentage of phosphorus. Minimum and maximum percentage of salt (if added). Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee, other mineral.

J. A vignette, graphic, or pictorial representation of a product on a pet food label shall not misrepresent the contents of the package.

1. The use of the word "proven" in connection with label claims for a pet food is improper unless scientific or other empirical evidence establishing the claim represented as "proven" is available.

K. No statement shall appear upon the label of a pet food which makes false or misleading comparisons between that pet food and any other pet food.

L. Personal or commercial endorsements are permitted on pet food labels where said endorsements are factual and not otherwise misleading.

M. When a pet food is enclosed in any outer container or wrapper which is intended for retail sale, all required label information must appear on such outside container or wrapper.

N. The words "Dog Food," "Cat Food," or similar designations must appear conspicuously upon the principal display panels of the pet food labels.

O. The label of a pet food shall not contain an unqualified representation or claim, directly or indirectly, that the pet food therein contained or a recommended feeding thereof is or meets the requisites of a complete, perfect scientific or balanced ration for dogs or cats unless such product or feeding:

1. Contains ingredients in quantities sufficient to provide the estimated nutrient requirements for all stages of the life of a dog or cat, as the case may be, which have been established by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences or,

2. Contains a combination of ingredients which when fed to a normal animal as the only source of nourishment will provide satisfactorily for fertility of females, gestation and lactation, normal growth from weaning to maturity without supplementary feeding, and will maintain the normal weight of an adult animal whether working or at rest and has had its capabilities in this regard demonstrated by adequate testing.

P. Labels for products which are compounded for or which are suitable for only a limited purpose (i.e., a product designed for the feeding of puppies) may contain representations that said pet food product or recommended feeding thereof, is or meets the requisites of a complete, perfect, scientific or balanced ration for dogs or cats only:

1. In conjunction with a statement of a limited purpose for which the product is intended or suitable (as, for example, in the statement 'a complete food for puppies'). Such representations and such required qualification therefore shall be juxtaposed on the same panel and in the same size, style and color print; and

2. Such qualified representations may appear on pet food labels only if:

a. The pet food contains ingredients in quantities sufficient to satisfy the estimated nutrient requirements established by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences for such limited or qualified purpose; or

b. The pet food product contains a combination of ingredients which when fed for such limited purpose will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing.

Q. Except as specified by Section R68-2-6, the name of any ingredient which appears on the label other than in the product name shall not be given undue emphasis so as to create the impression that such an ingredient is present in the product in a larger amount than is the fact, and if the names of more than one such ingredient are shown, they shall appear in the order of their respective predominance by weight in the product.

R68-2-5. Customer-Formula Feed Labeling.

A. Customer-formula feed shall be accompanied with the following prescribed information shown on label, invoice, delivery ticket, or other shipping document:

1. The name and address of the manufacturer.

2. The name and address of the purchaser.

3. The date of sale or delivery.

4. The customer-formula feed name and brand name if any.

5. The product name and net weight of each registered commercial feed and each other ingredient used in the mixture.

6. If a drug-containing product is used:

a. The purpose of the medication (claim statement).

b. The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with Section R68-2-7.

c. The directions for use and precautionary statements as required by Section R68-2-9.

R68-2-6. Brand and Product Names.

A. The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A mixture labeled "Dairy Feed," for example, must be suitable for that purpose.

B. Commercial, registered brand or trade names are not permitted in guarantees of ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such a name.

C. The name of a commercial feed shall not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name; provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredient or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.

D. The word "protein" shall not be permitted in the product name of a feed that contains added non-protein nitrogen.

E. When the name carries a percentage value, it shall be understood to signify protein and/or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein"; provided, that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers shall not be used in such a manner as to be misleading or confusing to the customer.

F. Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by the Association of American Feed Control Officials unless the Commissioner designates otherwise.

G. The word "vitamin," or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in Section R68-2-7.

H. The term "mineralized" shall not be used in the name of a feed except for "TRACE MINERALIZED SALT." When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.

I. The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products is derived unless the meat and meat by-products are made from cattle, swine, sheep and goats.

J. No flavor designation shall be used on a pet food label unless the designated flavor is detectable by a recognized test method, or is one, the presence of which, provides a characteristic distinguishable by the pet. Any flavor designation on a pet food label must either conform to the name of its source as shown in the ingredient statement or the ingredient statement shall show the source of its flavor. The word flavor shall be printed in the same size type and with an equal degree of conspicuousness as the ingredient term(s) from which the flavor designation is derived. Distribution of pet food employing such flavor designation or claims on the labels of the product distributed by them shall, upon request, supply verification of the designated or claimed flavor to the appropriate control official.

K. The designation "100%" or "All" or words of similar connotation shall not be used in the brand or product name of a pet food if it contains more than one ingredient. However, for the purpose of this provision, water sufficient for processing, required decharacterizing agents and trace amounts of preservatives and condiments shall not be considered ingredients.

L. The name of the pet food shall not be derived from one or more ingredients of a mixture of a pet food product unless all components or ingredients are included in the name except as specified by Subsections R68-2-6-J, M or N; provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if:

1. the ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or

2. it does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients; or

3. it is not otherwise false or misleading.

M. When an ingredient or a combination of ingredients derived from animals, poultry, or fish constitutes 95% or more of the total weight of all ingredients of a pet food mixture, the name or names of such ingredient(s) may form a part of the product name of the pet food; provided, that where more than one ingredient is part of such product name, then all such ingredient names shall be in the same size, style and color print.

N. When an ingredient or a combination of ingredients derived from animals, poultry or fish constitutes at least 25% but less than 95% of the total weight of all ingredients of a pet food mixture the name or names of such ingredient or ingredients may form a part of the product name of the pet food only if the product name also includes a primary descriptive term such as "meatballs" or "fishcakes" so that the product name describes the contents of the products in accordance with an established law, custom or usage or so that the product name is not misleading. All such ingredient names and the primary descriptive term shall be in the same size, style and color print.

O. Contractions or coined names referring to ingredients shall not be used in the name of a pet food unless it is in compliance with Subsections R68-2-6-J, L, M and N.

R68-2-7. Expression of Guarantees.

A. The guarantees for crude protein, equivalent protein from non-protein nitrogen, crude fat, crude fiber and mineral guarantees, (when required) will be in terms of percentage.

B. Commercial feeds containing 6 1/2% or more Calcium, Phosphorus, Sodium and Chloride shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentage of salt (NaCl). Minerals, except salt (NaCl), shall be guaranteed in terms of percentage of the element. When calcium and/or salt guarantees are given in the guaranteed analysis such shall be stated and conform to the following:

1. When the minimum is 5.0% the maximum shall not exceed the minimum by more than one percentage point.

2. When the minimum is above 5.0% the maximum shall not exceed the minimum by more than 5 percentage points.

C. Guarantees for minimum vitamin content of commercial feeds and feed supplements, when made, shall be stated on the label in milligrams per pound of feed except that:

1. Vitamin A, other than precursors of vitamin A, shall be stated in International or USP units per pound.

2. Vitamin D, in products offered for poultry feeding, shall be stated in International Chick Units per pound.

3. Vitamin D for other uses shall be stated in International or USP units per pound.

4. Vitamin E shall be stated in International or USP Units per pound.

5. Guarantees for vitamin content on the label of a commercial feed shall state the guarantee as true vitamins, not compounds, with the exception of the compounds, Pyridoxine, Hydrochloride, Choline Chloride, Thiamine, and d-Panto-thenic Acid.

6. Oils and premixes containing vitamin D or both may be labeled to show vitamin content in terms of units per gram.

D. Guarantees for drugs shall be stated in terms of percent by weight.

1. Antibiotics present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed.

2. Antibiotics present at 2,000 or more grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed.

3. Labels for commercial feeds containing growth promotion and/or feed efficiency levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the Federal Food Additive Regulation for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic.

4. The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.

E. Commercial feeds containing any added non-protein nitrogen shall be labeled as follows:

1. For ruminants.

a. Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than 5% protein from natural sources shall be guaranteed as follows:

Crude Protein, minimum, (%)

(This includes not more than (%) equivalent protein from non-protein nitrogen).

b. Mixed feed concentrates and supplements containing less than 5% protein from natural sources may be guaranteed as follows:

Equivalent Crude Protein from Non-Protein Nitrogen, minimum, (%)

c. Ingredient sources of non-protein nitrogen such as Urea, Di-Ammonium Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic non-protein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows:

Nitrogen, minimum, (%)

Equivalent Crude Protein from Non-Protein Nitrogen, minimum, (%)

2. For non-ruminants.

a. Complete feeds, supplements and concentrates containing crude protein from all forms of non-protein nitrogen, added as such, shall be labeled as follows:

Crude Protein, minimum (%)

(This includes not more than (%) equivalent crude protein which is not nutritionally available to species of animal for which feed is intended.)

b. Premixes, concentrates or supplements intended for non-ruminants containing more than 1.25% equivalent crude protein with adequate directions for use and a prominent statement: "WARNING: This feed must be used only in accordance with directions furnished on the label."

F. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

G. or the purpose of determining compliance with this act, a commercial feed shall be deemed in violation if an analysis shows one or more ingredients varies from the guarantee in an amount exceeding the permitted analytical variations (PAV) published by the Association of American Feed Control Officials.

R68-2-8. Ingredients.

A. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the Official Definitions of Feed Ingredients as published in the Official Publication of American Feed Control Officials, the common or usual name, or one approved by the Commissioner. Failure to list the ingredients of a pet food in descending order by their predominance by weight in non-quantitative terms may be misleading.

B. The name of each ingredient must be shown in letters or type of the same size.

C. No references to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

D. The term "dehydrated" may precede the name of any product that has been artificially dried.

E. A single ingredient product defined by the Association of American Feed Control Officials is not required to have an ingredient statement.

F. Tentative definitions for ingredients shall not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition exists or the ingredient has a common accepted name that requires no definition, (i.e. sugar).

G. When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.0007% iodine, uniformly distributed.

R68-2-9. Directions for Use and Precautionary Statements.

A. Directions for use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds containing additives (including drugs, special purpose additives, or non-nutritive additives) shall:

1. Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles: and,

2. Include, but not be limited to, all information described by all applicable rules under the Federal Food, Drug and Cosmetic Act.

B. Adequate directions for use and precautionary

statements are required for feeds containing non-protein nitrogen as specified in Section R68-2-9.

C. Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

R68-2-10. Non-Protein Nitrogen.

A. Urea and other non-protein nitrogen products defined in the Official Publication of the Association of American Feed Control Officials are acceptable ingredients only in commercial feeds for reminant animal as a source of equivalent crude protein. If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one-third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: "CAUTION: USE AS DIRECTED." The directions for use and the caution statement shall be read and understood by ordinary persons under customary conditions of purchase and use.

B. Non-protein nitrogen defined in the Official Publication of the Association of American Feed Control Officials, when so indicated, are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrient as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations shall not exceed 1.25% of the total daily ration.

C. On labels such as those for medicated feeds which bear adequate feeding directions and/or warning statements, the presence of added non-protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein nitrogen.

R68-2-11. Drug and Feed Additives.

A. Prior to approval of a registration application and/or approval of a label for commercial feed which contain additives (including drugs, other special purpose additives, or non-nutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

B. Satisfactory evidence of safety and efficacy of a commercial feed may be:

1. When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable rule in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "generally recognized as safe" for such use, or

2. When the commercial feed is itself a drug as defined in Section 4-12-2 and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21 U.S.C., 360 (b).

R68-2-12. Adulterants.

A. For the purpose of Section 4-12-2, the terms "poisonous or deleterious substances" include but are not limited to the following:

1. Fluorine and any mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.20% for breeding and dairy cattle; 0.30% for slaughter cattle; 0.30% for sheep; 0.35% for lambs; 0.45% for swine and 0.60% for poultry.

2. Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration above the following amounts: 0.004% for breeding and dairy cattle: 0.009% for slaughter cattle; 0.006% for sheep; 0.01% for lambs; 0.015% for swine and 0.03% for poultry.

3. Soybean meal, flakes or pellets or other vegetable meal, flakes or pellets which have been extracted with trichlorethylene or other chlorinated solvents.

4. Sulfur dioxide, Sulfurous acid, and salts of Sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of B_1 (Thiamine).

5. Aflatoxin content of any feed ingredient which exceeds 20 parts per billion and/or any quantity established by Federal Statutes or Guidelines.

B. A commercial feed shall be deemed to be adulterated if it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice rules for medicated feeds and for medicated premixes as published in the Code of Federal Regulations, Title 21, Parts 225 and 226 Sections 225.1-225.115 and 226.1-226.115, respectively.

C. All screenings or by-products of grain and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer shall be ground fine enough or other wise treated to destroy the viability of such weed seeds so that the finished product contains no more than six viable prohibited noxious weed seeds per pound.

KEY: feed contamination
December 16, 1997 4-12-3
Notice of Continuation August 21, 1996

R70. Agriculture and Food, Regulatory Services.
R70-310. Grade A Pasteurized Milk.
R70-310-1. Authority.

A. Promulgated Under the Authority of Subsection 4-2-2(1)(j).

B. Scope - this rule shall apply to all Grade A pasteurized milk products sold, bought, processed, manufactured or distributed within the State of Utah.

R70-310-2. Adoption of USPHS Ordinance.

The Grade A Pasteurized Milk Ordinance, 1999 Recommendations of the United States Public Health Service/Food and Drug Administration, is hereby adopted and incorporated by reference within this rule. This document is available for public inspection, during normal working hours, and may be reviewed at the main office of the Utah Department of Agriculture and Food, 350 No. Redwood Road, SLC, UT 84116.

R70-310-3. Regulatory Agency Defined.

The definition of "regulatory agency" as given in section 1(x) of the Grade A Pasteurized Milk Ordinance shall mean the Commissioner of Agriculture and Food of the State of Utah or his authorized representative(s).

R70-310-4. Penalty.

Violation of any portion of the Grade A Pasteurized Milk Ordinance 1999 recommendation may result in civil or criminal action, pursuant to Section 4-2-15.

KEY: food inspection
April 3, 2000 4-2-2
Notice of Continuation February 10, 2000

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope of Definitions, and General Provisions.
R81-1-1. Scope and Effective Date.

These rules are adopted pursuant to Section 32A-1-107(1), and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the department and all licensees and permittees of the commission.

R81-1-2. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

(1) "ACT" means the Alcoholic Beverage Control Act, Title 32A.

(2) "BAR" means a service structure maintained on a licensed premises to furnish glasses, ice and setups and to mix and serve liquor.

(3) "COMMISSION" means the Utah Alcoholic Beverage Control Commission.

(4) "COUNTER" means a level surface on which patrons consume food.

(5) "DECISION OFFICER" means a person who has been appointed by the commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

(6) "DEPARTMENT" or "DABC" means the Utah Department of Alcoholic Beverage Control.

(7) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.

(8) "DIRECTOR" of a private club means an individual elected by stockholders or members of a private club at an annual meeting to direct organizational and operational policies of the club.

(9) "DISCIPLINARY ACTION" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

(10) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled one ounce quantities and has a meter which counts the number of pours served.

(11) "FAIR MARKET VALUE" means the price at which a willing seller and willing buyer will trade under normal conditions. It means neither panic value, auction value, speculative value, nor a value fixed by depressed or inflated prices. Rather, it is a fair, economic, just and equitable value under normal conditions.

(12) "GUEST ROOM" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn.

(13) "HEARING OFFICER" or "PRESIDING OFFICER" means a person who has been appointed by the commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the commission for final action.

(14) "LETTER OF ADMONISHMENT" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

(15) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.

(16) "MEMBER" means an individual who regularly pays dues to a private club. Member does not include any corporation or other business enterprise or association, or any other group or association. A member and the member's spouse is entitled to all rights and privileges as provided by the club's bylaws or Utah law.

(17) "POINT OF SALE" means that portion of a package agency, restaurant, private club, or selling area for a single event permittee that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

(18) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.

(19) "RESPONDENT" means a department licensee, or permittee, or employee of a licensee or permittee, against whom a letter of admonishment or notice of agency action is directed.

(20) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.

(21) "UTAH ALCOHOLIC BEVERAGE CONTROL LAWS" means any Utah statutes or rules relating to the manufacture, possession, transportation, distribution and sale of alcoholic beverages, commission rules, and municipal and county ordinances.

(22) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah Alcoholic Beverage Control Act or rules of the commission by a department licensee, or permittee, or employee of a licensee or permittee.

(23) "WARNING SIGN" means a sign no smaller than six inches high by twelve inches wide, with print no smaller than one half inch bold letters and clearly readable, stating: "Warning: the consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others".

R81-1-3. General Policies.

(1) Administrative Policy.

The administration of the department shall be nonpartisan and free of partisan political influence, and operated as a public business using sound management principles and practices. The commission and department shall regulate the sale of alcoholic beverages in a manner and at prices which reasonably satisfy the public demand and protect the public interest including the rights of citizens who do not wish to be involved with alcoholic products.

(2) Official State Label.

Pursuant to Section 32A-1-109(6)(m), the department shall affix an official state label to every container of liquor over 187 ml sold in the state, and to every box containing containers of liquor under 187 ml in size. Removal of the label is prohibited.

(3) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in

conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(4) Manner of Paying Fees.

Payment of all fees for licenses or permits, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

(5) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of $20 per copy.

(6) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Section 15-1-1 for any debt or obligation owed to the department by a licensee, permittee or package agent.

(7) Returned Checks.

The department will assess a fifteen dollar charge for any check payable to the department returned for the following reasons:

(a) Insufficient Funds;

(b) Refer to Maker; and

(c) Account Closed.

Receipt of a check payable to the department which is returned by the bank for any of these reasons may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the department offices, 1625 South 900 West, Salt Lake City, Utah, plus the fifteen dollars returned check charge. Failure to make good the returned check and pay the fifteen dollar returned check charge within thirty days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(8) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

R81-1-5. Notice of Public Hearings and Meetings.

Notice of all department meetings and public hearings, other than disciplinary hearings, shall be done in the following manner:

(1) The public notice shall specify the date, time, agenda, and location of each hearing or meeting.

(2) In the case of public meetings, notice shall be made not less than 24 hours prior to the meeting.

(3) In the case of hearings, other than disciplinary hearings, public notice shall be made not less than ten days prior to the hearing.

(4) The procedure for posting public notice and the definition of public meeting for purposes of these rules, shall be the same as provided in Section 52-4-6.

R81-1-6. Violation Schedule.

(1) Authority. This rule is pursuant to Sections 32A-1-107(1)(c)(i), 32A-1-107(1)(e), 32A-1-107(4)(b), 32A-1-119(6) and (7). These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their employees and agents who violate statutes and commission rules relating to alcoholic beverages. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. Violations are adjudicated under procedures contained in Section 32A-1-119 and disciplinary hearing Section R81-1-7.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the commission for violations of the alcoholic beverage laws. It shall be used by department decision officers in processing violations, and by presiding officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all commission licensees and permittees and their employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under Section 32A-7-106.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee from holding the license. These are fundamental licensing requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance with the Administrative Procedures Act, Title 63, Chapter 46b or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

(d) In addition to the penalty classifications contained in this rule, the commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing,

wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee for a period determined by the commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded encouraged, or intentionally aided another to engage in the violation.

(e) When the commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee to make payment on or before that date shall result in the immediate suspension of the license or permit until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to a three day suspension of the license or permit and/or up to a $300 fine. However, if the licensee or permittee commits more than three minor violations regardless of type, the commission may suspend the license or permit for a period exceeding three days, may revoke the license or permit, and/or impose a fine not to exceed $25,000. A record of any letter of admonishment shall be included in the licensee's or permittee's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of the same type of minor violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a $100 to $500 fine.

(iii) Third occurrence of the same type of minor violation: one to five day suspension of the license or permit and/or a $100 to $500 fine.

(iv) More than three minor violations regardless of type: six day suspension to revocation and/or a fine not to exceed $25,000.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to a 20 day suspension of the license or permit. In lieu of or in addition to a suspension, a fine ranging from $300 to $2000 may be assessed. However, if the licensee or permittee commits more than three moderate violations regardless of type, the commission may suspend the license or permit for a period exceeding 20 days, may revoke the license or permit, and/or impose a fine not to exceed $25,000.

(i) First occurrence involving a moderate violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a $1000 fine.

(ii) Second occurrence of the same type of moderate violation: three to ten day suspension of the license or permit and/or a $500 to $1000 fine.

(iii) Third occurrence of the same type of moderate violation: ten to 20 day suspension of the license or permit and/or a $1000 to $2000 fine.

(iv) More than three moderate violations regardless of type: 21 day suspension to revocation and/or a fine not to exceed $25,000.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, and involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day suspension to revocation of the license or permit. In lieu of or in addition to a suspension, a fine ranging from $500 to $9000 may be assessed. However, if the licensee or permittee commits more than two serious violations regardless of type, the commission shall revoke the license or permit.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and/or a $500 to $3000 fine.

(ii) Second occurrence of the same type of serious violation: ten to 90 day suspension of the license or permit and/or a $1000 to $9000 fine.

(iii) Third occurrence of any type of serious violation: revoke license or permit.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or a fine not to exceed $25,000. However, if the licensee or permittee commits more than one grave violation regardless of type, the commission shall revoke the license and permit.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and/or a $1000 fine to the maximum fine authorized by law.

(ii) Second occurrence of any type of grave violation: revoke license or permit.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule.

TABLE

Violation Degree and Frequency	Warning Verbal/Written		Fine $ Amount	Suspension No. of Days	Revoke License
Minor					
1st	X	X			
2nd			100 to 500		
3rd			100 to 500	1 to 5	
Over 3			to 25,000	6 to	X
Moderate					
1st		X	to 1,000		
2nd			500 to 1,000	3 to 10	
3rd			1,000 to 2,000	10 to 20	
Over 3			to 25,000	21 to	X
Serious					
1st			500 to 3,000	5 to 30	
2nd			1,000 to 9,000	10 to 90	
3rd					X
Grave					
1st			1,000 to 25,000	10 to	X
2nd					X

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances. Examples of mitigating circumstances are: no prior violation history, good faith effort to prevent a violation, existence of written policies governing employee conduct, and extraordinary cooperation in the violation investigation that shows the licensee or permittee accepts responsibility. Examples of aggravating circumstances are: prior warnings about compliance problems, prior violation history, lack of written policies governing employee conduct, multiple violations during the course of the investigation, efforts to conceal a violation, intentional nature of the violation, the violation involved more than one patron or employee, the violation involved a minor and, if so, the age of the minor, and the violation resulted in injury or death.

(6) Violation Grid. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" and is incorporated by reference as part of this rule.

R81-1-7. Disciplinary Hearings.

(1) General Provisions.

(a) This rule is promulgated pursuant to Section 32A-1-107(1)(c)(i) and shall govern the procedure for disciplinary actions under the jurisdiction of the commission. Package agencies are expressly excluded from the provisions of this rule, and are be governed by the terms of the package agency contract.

(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.

(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63-46b-20.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act (UAPA), and Sections 32A-1-119 and -120.

(e) Penalties. This rule shall govern the imposition of any penalty against a commission licensee, permittee, or certificate of approval holder, an employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state. Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a commission license, permit, or certificate of approval, the assessment of costs of action, an order prohibiting an employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment

with any commission licensee, permittee, or certificate of approval holder for a period determined by the commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state. Department administrative costs are the hourly pay rate plus benefits of each department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for department overhead costs, the amount billed the department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the department. The commission may also assess additional costs if a respondent fails to appear before the commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

(f) Perjured Statements. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under Section 32A-12-304.

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent or any of the following:

(i) Service personally or by certified mail upon any employee working in the respondent's premises; or

(ii) Posting of the document or a notice of certified mail upon a respondent's premises; or

(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the respondent's premises.

(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the department office, 1625 South 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation. A respondent who is not a corporation may represent himself in any disciplinary action, or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate respondent may be represented by a member of the governing board of the corporation, or by a person duly authorized and appointed by the respondent in writing to represent the governing board of the corporation, or by an attorney.

(j) Presiding Officers. The commission or the director may appoint presiding officers to receive evidence in disciplinary actions, and to submit to the commission orders containing written findings of fact, conclusions of law, and recommendations for commission action.

(i) If fairness to the respondent is not compromised, the commission or director may substitute one presiding officer for another during any proceeding.

(ii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

(iii) Nothing precludes the commission from acting as presiding officer over all or any portion of an adjudication proceeding.

(iv) At any time during an adjudicative proceeding the presiding officer may hold a conference with the department and the respondent to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence; or

(D) expedite the proceedings.

(k) Definitions. The definitions found in Sections 32A-1-105 and Title 63, Chapter 46b apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

(m) Default.

(i) The presiding officer may enter an order of default against a respondent if the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.

(ii) The order shall include a statement of the grounds for default, and shall be mailed to the respondent and the department.

(iii) A defaulted respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the commission or presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the compliance section of the department shall review the report, and the alleged violator's violation history, and in accordance with R81-1-6, determine the range of penalties which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63-46b-1(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, permit, or certificate of approval, or action against an employee or agent of a licensee, permittee, or certificate of approval holder, or against a

manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the agency or staff member making the report;

(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and

(E) Notice that a rebuttal is permitted under these rules within ten days of service of the letter of admonishment.

(F) Notice that the letter of admonishment is subject to the approval of the commission.

(iii) A copy of the law enforcement agency or staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the department within ten days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) Any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may be withdrawn and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the commission for final approval. Upon commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the commission rejects the letter of admonishment, it may either direct the decision officer to dismiss the matter, or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time prior to the commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Designation of Informal Adjudicative Proceedings.

(i) All adjudicative proceedings conducted under this rule are hereby designated as informal proceedings.

(ii) If the decision officer determines that the alleged violation warrants commencement of adjudicative proceedings, the matter shall be referred to a presiding officer who shall commence informal adjudication proceedings.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the presiding officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all respondents and other persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the department;

(B) The department's case number;

(C) The name of the adjudicative proceeding, "DABC vs. ";

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63-46b-4 and -5, and that an informal hearing will be held where the respondent and department shall be permitted to testify, present evidence and comment on the issues;

(F) The date, time and place of any prehearing conference with the presiding officer;

(G) The date, time and place of the scheduled informal hearing;

(H) A statement that a respondent who fails to attend or participate in the hearing may be held in default;

(I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

(I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the agency or department staff member making the violation report;

(II) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c) if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation under Section 32A-1-119(5)(d) if revocation is sought in the complaint;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the presiding officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's department file.

(iv) The notice of agency action shall be mailed to each respondent, any attorney representing the department, and, if applicable, any law enforcement agency that referred the alleged violation to the department.

(v) The presiding officer may permit or require pleadings in addition to the notice of agency action. All additional

pleadings shall be filed with the presiding officer, with copies sent by mail to each respondent and to the department.

(vi) Amendment to Pleading. The presiding officer may, upon motion of the respondent or department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The presiding officer may hold a prehearing conference with the respondent and the department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the department and respondent or their authorized attorney or representative, and by the presiding officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the commission. No further action shall be required with respect to any action or issue so stayed until the commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the commission rejection of the settlement agreement.

(c) The Informal Hearing.

(i) The respondent and department shall be notified in writing of the date, time and place of the hearing at least ten days in advance of the hearing. Notice may appear in the notice of agency action, or may appear in a separate notice issued by the presiding officer. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The presiding officer shall proceed to prepare and serve on respondent an order pursuant to R81-1-7(3)(d).

(ii) All hearings shall be presided over by the presiding officer.

(iii) The respondent named in the notice of agency action and the department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the commission, and of technical or scientific facts within the commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by a respondent or the department, or may be issued by the presiding officer on his own motion.

(vii) A respondent shall have access to information contained in the department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the department's expense, as follows:

(A) The record of the proceedings may be made by means of a tape recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department, prepare a transcript of the hearing, subject to any restrictions that the department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or tape recording of a hearing is made, it will be available at the department for use by the respondent, but the original transcript or tape recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The presiding officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) department; (2) respondent; (3) rebuttal by department.

(xiii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit a respondent and the department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action.

(C) A copy of the presiding officer's order shall be promptly mailed to the respondent and the department.

(D) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63-46b-2(1)(h)(ii)(iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

(C) No additional evidence shall be presented to the commission. The commission may, at its discretion, permit the respondent and department to present oral presentations.

(D) After the commission has reached a final decision, it shall issue a signed, written order pursuant to Section 32A-1-119(5) and 63-46b-5(1)(i), containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the commission and effective date of the action taken;

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63-46b-14, -15, -17, and -18, and 32A-1-119 and -120.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action.

(H) A copy of the commission's order shall be promptly mailed to the respondent and the department.

(e) Judicial Review.

(i) Any petition for judicial review of the commission's final order must be filed within thirty days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63-46b-15, -17, and -18, and 32A-1-119 and -120.

R81-1-8. Advertising.

(1) Preamble. The alcoholic beverage industry has often proclaimed its sense of responsibility for judicious handling of its products. Accordingly, the commission urges the industry to avoid any description of a situation that leads the reader or viewer to believe that the enjoyment of that situation is dependent upon the consumption of alcoholic beverages.

(2) General Provisions.

(a) Utah statutes and rules of the commission govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. The Federal Alcohol Administration Act, 27 U.S.C. 205(e) and (f), and federal

regulations, Subchapter A, Parts 4, 5, 6, and 7, of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury, as set forth in 27 CFR 4,5,6, and 7, (1993 Edition) are adopted and incorporated by reference to regulate the labeling and advertising of alcoholic beverages sold within this state, except where the provisions of the federal statute and regulations may be contrary to or inconsistent with the provisions of Utah statutes, or rules of the commission.

(b) No advertisement or promotional scheme involving alcoholic beverages which is primarily or especially appealing to minors is permitted. No advertisement or promotional scheme involving alcoholic beverages shall be placed with or appear in any school, college or university newspaper.

(c) No advertisement or promotional scheme involving alcoholic beverages that encourages over-consumption or intoxication such as "all you can drink for $...", or "happy hour" is allowed.

(d) No statements, pictures or illustrations advertising alcoholic beverages are allowed which include:

(i) persons with children and alcoholic beverages;

(ii) childhood figures or characters such as Santa Claus, or the Easter Bunny;

(iii) any reference to price, except:

(A) on displays in taverns and private clubs, if not visible to persons off-premises;

(B) on point-of-sale displays, other than light devices, in retail establishments that sell beer for off-premise consumption, if not visible to persons off-premises;

(C) on menus and menu boards in retail establishments that sell beer for on-premise consumption; and

(D) on displays at the site of a temporary special event for which a single event liquor permit has been obtained from the commission or a temporary special event beer permit has been obtained from a local authority, to inform attendees of the location where alcoholic beverages are being dispensed.

(iv) drinking scenes; or

(v) overt promotion of the consumption of alcoholic products.

Permission of the commission shall not be necessary for any advertisement otherwise complying with this rule.

R81-1-9. Liquor Dispensing Systems.

A licensee may not install or use any system for the automated mixing or dispensing of liquor unless the dispensing system has been approved by the department.

(1) Minimum requirements. The department will only approve a dispensing system which:

(a) dispenses liquor in calibrated one ounce quantities; and

(b) has a meter which counts the number of pours served.

The margin of error of the system cannot exceed 1/16 of an ounce or two milliliter variation in pour size.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Method of approval.

(a) Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and supplier of the product; the type and method of dispensing, calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.

(b) Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once the product is installed, the burden is on the licensee to maintain it to ensure that it continues to meet the manufacturer's specifications. Failure to maintain it may be grounds for suspension or revocation of the licensee's liquor license.

(c) Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.

(4) Operational restrictions.

(a) The system must be calibrated to pour a one ounce quantity of liquor. The calibration may not be changed or adjusted to pour any alternate quantity.

(b) Voluntary consent is given that representatives of the department, Utah Division of Investigations, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Liquor bottles in use with a remote liquor dispensing system must be in a locked storage area. Any other primary liquor not in service must remain unopened. There shall be no opened primary liquor bottles at a dispensing location that are not affixed to an approved dispensing device. This rule does not prohibit the presence of opened containers of wine for use as provided by law.

(d) The dispensing system and liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must conform to the federal Bureau of Alcohol Tobacco and Firearms (BATF) ruling 77-32 which states in part that bar dispensing systems for use by retail liquor dealers "(1) must avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle, (2) must not dispense from or utilize containers other than original liquor bottles filled, stamped, and labeled in conformity with ATF regulations, (3) must prohibit the intermixing of different kinds of products or brands in the liquor bottles from

which they are being dispensed...." BATF ruling 77-32 (1977) is incorporated by reference.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 194 and 26 USCA Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) brands and container sizes of liquor dispensed through the dispensing system;

(ii) number of one ounce portions dispensed through the dispensing system by brand or sales price level;

(iii) number of one ounce portions sold by brand or sales price level; and

(iv) beginning and ending meter readings by brand or sales price level to correlate with cost and sales totals by brand or sales price level. These records must be made available for inspection and audit by the department or law enforcement.

(h) Each licensee shall file with the department a complete price list which includes the selling price, by brand, of each mixed drink dispensed through a metered dispensing system. The licensee or his agent shall not:

(i) sell more than one mixed drink to a patron for a single price;

(ii) establish a single price based on the required purchase of more than one mixed drink; or

(iii) sell a mixed drink at a price that is reduced from the usual established price on the list the licensee has on file with the department.

This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains one ounce of primary liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both. No lists which are wall posted on the premises of a restaurant licensee may be larger than 8 1/2 by 11 inches.

A licensee or his employee shall not:

(i) sell or serve any brand of liquor not identical to that ordered by the patron; or

(ii) misrepresent the brand of any liquor contained in any drink sold or offered for sale.

(j) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R81-1-10. Wine Dispensing.

(1) Each licensee shall keep daily records for each dispensing outlet as follows:

(a) brands and container sizes of each wine dispensed by the glass;

(b) number of five ounce portions dispensed of each wine by brand and sales price level; and

(c) number of five ounce portions sold by brand and sales price level.

These records must be made available for inspection and audit by the department or law enforcement.

(2) The licensee or his agent shall not:

(a) sell more than one five ounce glass of wine to a patron for a single price;

(b) establish a single price based on the required purchase of more than one five ounce glass of wine; or

(c) sell a five ounce glass of wine at a price that is reduced from the usual established price.

R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32A-1-105(36) shall include the location of any licensed restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32A-1-105(47) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount dispensed in each outlet as reconciled by the record keeping requirements of this rule.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) for liquor and wine dispensing, daily dispensing records as required in R81-1-9(4)(g) and R81-1-10(1) must also show the amount of alcoholic beverage products dispensed to each licensed location;

(b) for beer dispensing, daily records must be kept in a form acceptable to the department that show the amount of beer dispensed to each outlet;

(c) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location. Sales records and dispensing records must be balanced daily;

(d) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly basis. Allocations must be able to be supported by the record keeping requirements of Section 32A-4-106(26)(27)(32), or 32A-5-107(11)(12)(15)(16)(17), or 32A-10-206(13);

(e) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(f) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(g) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(h) a licensee must obtain department approval before dispensing alcoholic beverages as described in this section. Applications for approval shall be in a form prescribed by the department and shall include a floor plan of all storage, dispensing, sales, service, and consumption areas involved.

(i) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R81-1-12. Alcohol Training and Education Seminar.

(1) The alcohol training and education seminar, as described in Section 62A-8-103.5, shall be completed by every employee of every new and renewing licensee under Title 32A who sells or furnishes alcoholic beverages to the public within the scope of his employment for consumption on the premises. Employees must complete the training within six months of commencing employment. Each licensee shall maintain current records on each employee indicating: (1) date of hire, and (2) date of completion of training.

(2) The seminar shall include the following subjects in the curriculum and training:

(a) alcohol as a drug and its effect on the body and behavior;

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

(e) alternate means of transportation to get a customer safely home.

(3) Persons required to complete the seminar shall pay a fee to the seminar provider.

(4) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

R81-1-13. Utah Government Records Access and Management Act.

(1) Purpose. To provide procedures for access to government records of the commission and the department.

(2) Authority. The authority for this rule is Sections 63-2-204, and 63-2-904 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the commission or the department should be written and made to the executive secretary of the commission or the records officer of the department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 South 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the commission and the department by contacting the appropriate official specified in paragraph (3) above. The department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63-2-203(3). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by Section 63-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the commission or department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of Section 63-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in paragraph (3) above. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63-2-603. The request should be made to the appropriate official specified in paragraph (3) above.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R81-1-14. Americans With Disabilities Act Complaint Procedure.

(1) Authority and Purpose. This rule is promulgated pursuant to Section 63-46a-3(3). The commission, pursuant to 28 CFR 35.107, July 1, 1992 Ed., adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, with the commission or the department.

(2) No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the commission, or department, or be subjected to discrimination by the commission or department.

(3) Definitions.

"ADA coordinator" means the commission's and department's coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

"ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies: Office of Planning and Budget; Department of Human Resource Management; Division of Risk Management; Division of Facilities Construction Management; and Office of the Attorney General.

"Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of an impairment; or being regarded as having an impairment.

"Individual with a disability" means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the commission or department, or who would otherwise be an eligible applicant for vacant positions with the commission or department, as well as those who are employees of the commission or department.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) Filing of Complaints.

(a) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992, and the effective date of this rule, may be filed within 60 days of the effective date of this rule.

(b) The complaint shall be filed with the commission's and department's ADA coordinator in writing or in another accessible format suitable to the individual.

(c) Each complaint shall:

(i) include the individual's name and address;

(ii) include the nature and extent of the individual's disability;

(iii) describe the commission's or department's alleged discriminatory action in sufficient detail to inform the commission or department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desire; and

(v) be signed by the individual or by his legal representative.

(d) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(5) Investigation of Complaint.

(a) The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in paragraph (4)(c) of this rule if it is not made available by the individual.

(b) When conducting the investigation, the ADA coordinator may seek assistance from the commission's or department's legal, human resource, and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the ADA coordinator shall consult with the ADA State Coordinating Committee.

(6) Issuance of Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

(b) If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable, suitable format why the decision is being delayed and what additional time is needed to reach a decision.

(7) Appeals.

(a) The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

(b) Appeals involving the commission shall be filed in writing with the commission. Appeals involving the department shall be filed in writing with the department's executive director or a designee other than the ADA coordinator.

(c) The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the commission, executive director, or designee.

(d) The appeal shall describe in sufficient detail why the ADA coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(e) The commission, executive director, or designee, shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the commission, executive director, or designee shall also consult with the State ADA Coordinating Committee.

(f) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

(g) If the commission, executive director, or designee is unable to reach a decision within the ten working day period, the individual shall be notified in writing or by another acceptable, suitable format why the decision is being delayed and the additional time needed to reach a decision.

(8) Classification of records. The record of each complaint and appeal, and all written records produced or

received as part of the action, shall be classified as protected as defined under Section 63-2-304 until the ADA coordinator, executive director, or their designees issue the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302, or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, executive director, or designees shall be classified as public information.

(9) Relationship to other laws. This rule does not prohibit or limit the use of remedies available to individuals under the state Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures, 28 CFR 35.170, et seq.; or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

R81-1-15. Commission Declaratory Orders.

(1) Authority. As required by Section 63-46b-21, and as authorized by Section 32A-1-107, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the commission, a rule promulgated by the commission, or an order issued by the commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

R81-1-16. Disqualification Based Upon Conviction of Crime.

(1) The Alcoholic Beverage Control Act generally disqualifies any person, licensee, or, in the case of a partnership or a corporation, a partner, manager, officer, director, or shareholder with more than 20% of the issued and outstanding stock, from being an employee of the department, receiving a license, or being an employee of a licensee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages; or

(c) any crime involving moral turpitude.

(2) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

R81-1-17. Advertising.

(1) Purpose.

(a) Pursuant to actions taken on May 13, 1996, wherein the United States Supreme Court issued its ruling in 44 Liquormart, Inc. v. Rhode Island, 64 U.S.L.W. 4313 (1996), holding that a statute banning off-premises advertisement of liquor prices was a violation of the First Amendment right to freedom of commercial speech, and whereas on July 2, 1996, Utah Licensed Beverage Association v. Michael Leavitt et al, Civil No. 96-CV-581 S, was filed in the United States District Court, District of Utah, Central Division, naming the governor, attorney general, and the commission as defendants, and whereas plaintiffs seek to declare many of Utah's statutes and rules regulating alcoholic beverage advertising unconstitutional, this rule is promulgated to interpret currently applicable laws in a manner to preserve their constitutionality, and to identify such laws that the state will not enforce.

(b) No provision of this rule shall be construed as a

concession that any current law or rule is unconstitutional. To the extent any statute or rule is inconsistent with this rule, this rule shall govern.

(2) Definitions. For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(a) labels on products; or

(b) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(3) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32A-1-105(24), or liquor services, by retailers of such products including the department, state stores, package agencies, restaurants, airport lounges, private clubs, special use permittees, and single event permittees, or by manufacturers, suppliers, importers, wholesalers, or any of their affiliates, subsidiaries, officers, directors, agents, employees, or representatives of such products, are applicable and enforceable except as otherwise provided in this rule.

(5) By this rule, the statutory provisions of Sections 32A-4-106(21)(a) and (b), 32A-7-106(2)(m), 32A-12-401, and rule provisions of the Utah Administrative Code listed in R81-1-8, R81-4A-12 and R81-7-2, to the extent they restrict the advertising of beer, as defined in 32A-1-105(4), by manufacturers, wholesalers, or retailers of such products are suspended. Instead, all advertising of beer shall comply with the advertising requirements listed in Section (10) of this rule.

(6) Current statutes and rules restricting private club advertising calculated to increase club membership are applicable and enforceable.

(7)(a) All trade practice restrictions provided by Section 32A-12-603 regulating things of value that liquor, wine and heavy beer industry members, as that term is defined in 32A-12-601, may provide to liquor, wine and heavy beer retailers are applicable and enforceable.

(b) All trade practice restrictions provided by Section 32A-12-603 regulating things of value that beer industry members may provide to beer retailers are applicable and enforceable, with the following amendments:

(i) any on-premise beer retailer may be provided, receive and use things of value from beer industry members to the same extent authorized for any tavern licensee;

(ii) a restaurant liquor licensee may be provided, receive and use things of value from beer industry members to the same extent authorized for any beer licensee or permittee; and

(iii) product displays, inside signs, and retailer advertising specialties relating to beer products may be displayed to the extent authorized by this rule and federal law (see 27 CFR 6.84), to include being visible on and off the beer retailer's premise.

(8) All provisions of Section 32A-12-606 relating to unlawful acts involving consumers are applicable and enforceable.

(9) Rule R81-1-8 (e) and (f), and R81-7-2 are repealed.

(10) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (4);

(b) May not contain any statement that is false or misleading;

(c) May not contain any statement, design, device, or representation which is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct or illegal activity, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any promotional scheme such as "happy hour" or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by persons under the age of 21 years (minors);

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not contain claims or representations that individuals cannot obtain social, professional, educational, athletic, or financial success or status without alcoholic beverage consumption, or claim or represent that individuals cannot solve social, personal, or physical problems without such consumption;

(l) May not offer alcoholic beverages to the general public without charge;

(m) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(n) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(11) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32A-1-119(5), (6) and (7), and any criminal penalties authorized by the Utah Alcoholic Beverage Control Act.

R81-1-18. Pilot Wine Tasting Program.

(1) Purpose. To implement and operate a pilot program by which local industry representatives may conduct retail licensee tastings of cork-finished wines at the department's administrative office complex.

(2) Authority. The authority for this rule is Section 32A-12-603(20) of the Alcoholic Beverage Control Act.

(3) Definitions.

(a) "Local industry representative" or "representative" means an individual, corporation, partnership, or limited liability company licensed by the commission under Section 32A-8-501 to represent cork-finished wine products of a manufacturer, supplier, or importer with the department, package agencies, licensees and permittees in this state, or any of the representative's employees.

(b) "Promotional tasting of wines" means conduct statutorily prohibited by Sections 32A-8-505(2), (6), and (7), 32A-12-201, 32A-12-208, 32A-12-603, and 32A-12-606.

(c) "Promotional tasting of wines" does not include:

(i) conduct authorized or excepted by Sections 32A-1-501 through -504, 32A-12-603(2), (3), (9), (10), and (20), 32A-12-606; or

(ii) conduct otherwise specifically allowed by law.

(d) "Retailer" means the holder of a private club or restaurant liquor license issued by the commission under Chapters 32A-4 and 32A-5, or any of the club's or restaurant's employees.

(e) "DABC" means the Department of Alcoholic Beverage Control.

(4) Check-out procedures.

(a) All cork-finished wines used in this program shall be checked out by a local industry representative from the department's club and restaurant store located at 1675 South 900 West, Salt Lake City, Utah.

(b) The wines shall be checked out during the store's regular business hours, excluding any recognized state or federal holiday, and the day preceding the holiday. The representative shall allow at least 24 hours from the time the order is placed until the wine is checked out

(c) At the time of check-out, each representative shall sign a purchase form which shall include the representative's DABC license number, a list of the wines checked out, and a statement that the wines will be used only for tasting sessions conducted under this program. The form shall be in triplicate: one shall remain at the club and restaurant store; one shall accompany the wines when the representative checks them in at the tasting session; and one shall be the representative's receipt.

(d) Store personnel shall affix a bright colored label to each wine bottle which reads "Retailer Sample" to identify it for use in the pilot wine tasting program.

(e) Each representative shall pay full retail price (including markup and taxes) for each bottle of wine checked out.

(5) Special order and transfer procedures.

(a) Wines used in this program shall be products listed by the department or special ordered by the representative in accordance with department policy P96-03-04.

(b) No wines shall be transferred from other state liquor stores, but may be transferred from stock available in the central administrative warehouse, including special orders.

(6) Procedures for tasting sessions.

(a) All tasting sessions under this program shall be done in the department's administrative office building in rooms designated by the department.

(b) Sessions shall be held at least on a weekly basis on days and at times designated by the department.

(c) Representatives shall schedule a tasting session with the department at least one week in advance.

(d) Tasting sessions may be attended by representatives and their employees, manufacturers, suppliers, and importers; retailers and their employees; and supervisory staff of the department.

(e) The department may put a reasonable maximum limit on the total number of attendees.

(f) All persons attending the tasting other than department staff must sign an attendance form. Representatives and their employees, and retailers and their employees shall also enter their DABC license number on the form.

(g) The representative is responsible for transporting to the tasting session all wines checked out from the club and restaurant store. All wines checked out must be checked in to the department within seven (7) calendar days. The wines must be returned as a group and not piecemeal. The representative shall present a copy of the purchase form and pay the administrative per bottle fee set by the commission before

participating in the session.

(h) Once the wines are brought to the session, they shall be checked in by the department, and may not leave the premises of the department's administrative office building except for disposition by the department. The department shall store wines for representatives for use at future tasting sessions, but not more than seven days from the date of purchase. The department shall maintain a record of each bottle returned.

(i) The department shall provide tables for the tasting sessions.

(j) The representatives shall provide their own buckets, glasses, openers, napkins, and food for the tasting sessions.

(k) Participants shall follow accepted protocol for wine tasting, and may not consume the wine.

(l) Any tasting session is subject to video taping at the discretion of the department. No audio taping shall be done.

(m) The representatives are responsible for dumping buckets and unused portions of wine, and cleaning up the tasting area at the conclusion of each tasting session.

(n) The department shall dispose of the wine as provided in Section 32A-12-603(3)(j) or -603(6).

(7) Administrative fee. In addition to the full retail price, the commission shall set an administrative fee for each bottle purchased under this program, and may periodically review the fee to ensure that it is sufficient to defray the department's actual, ordinary, and necessary costs directly incurred in administering this program.

(8) Penalties for Non-Compliance. Any representative or retail licensee who engages or participates in any promotional tasting of wines at any location in the state other than as allowed under this program may have their license suspended or revoked.

(9) Report to Legislature. The commission shall prepare a report of the program and file it with the Legislature before November 1, 1999.

(10) Duration of program. This program shall be in effect from July 1, 1998.

KEY: alcoholic beverages

March 27, 2000	**32A-1-107**
Notice of Continuation January 10, 1997	**32A-1-119(5)(c)**
	32A-3-103(1)(a)
	32A-4-103(1)(a)
	32A-4-203(1)(a)
	32A-5-103(3)(c)
	32A-6-103(2)(a)
	32A-7-103(2)(a)
	32A-8-103(1)(a)
	32A-9-103(1)(a)
	32A-10-203(1)(a)
	32A-11-103(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-17a. Pharmacy Practice Act Rules.
R156-17a-101. Title.

These rules are known as the "Pharmacy Practice Act Rules".

R156-17a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 17a, as used in Title 58, Chapters 1 and 17a or these rules:

(1) "Dispense", as defined in Subsection 58-17a-102(9), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medications.

(2) "NAPLEX" means North American Pharmacy Licensing Examination.

(3) "NABP" means the National Association of Boards of Pharmacy.

(4) "Qualified continuing education" as used in these rules, means continuing education that meets the standards set forth in Section R156-17a-313.

(5) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-17a-502.

R156-17a-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 17a.

R156-17a-104. Organization - Relationship to Rules R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-17a-301. Licensure - Pharmacist - Pharmacy Internship Standards.

In accordance with Subsection 58-17a-302(1)(d), the standards for the internship required for licensure as a pharmacist include the following:

(1) The internship shall consist of at least 1500 hours obtained in Utah, in another state or territory of the United States, or in Utah and another state or territory of the United States.

(a) Internship hours completed in Utah shall include at least 360 hours but not more than 900 hours in a college coordinated practical experience program as an integral part of the curriculum which shall include a minimum of 120 hours in each of the following practices:

(i) community pharmacy;

(ii) hospital pharmacy; and

(iii) another pharmacy setting.

(b) Internship hours completed in another state or territory of the United States shall be accepted based on the approval of hours by the state pharmacy board of that jurisdiction.

(2) Evidence of completed internship hours shall be documented to the division by the pharmacy intern at the time application is made for a Utah pharmacist license or at the completion of the Utah internship, if not seeking Utah licensure.

R156-17a-302. Licensure - Pharmacist - Examinations.

In accordance with Subsection 58-17a-302(1)(e), the examinations which must be successfully passed by applicants for licensure as a pharmacist are:

(1) the NAPLEX with a passing score as established by the NABP;

(2) the Multistate Pharmacy Jurisprudence Examination with a minimum passing score as established by the NABP.

R156-17a-303. Licensure - Pharmacist by Endorsement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), an applicant for licensure as a pharmacist by endorsement shall apply through the "Licensure Transfer Program" administered by NABP.

R156-17a-304. Licensure - Pharmacy Technician - Education Standards.

(1) In accordance with Subsection 58-17a-302(4)(e), the standards for the program of education and training which is a requirement for licensure as a pharmacy technician shall include:

(a) The program shall consist of at least 300 hours of combined didactic and clinical training to include at a minimum the following topics:

(i) legal aspects of pharmacy practice such as laws and rules governing practice;

(ii) hygiene and aseptic technique;

(iii) terminology, abbreviations and symbols;

(iv) pharmaceutical calculations;

(v) identification of drugs by trade and generic names, and therapeutic classifications;

(vi) filling of orders and prescriptions including packaging and labeling;

(vii) ordering, restocking, and maintaining drug inventory; and

(viii) computer applications in the pharmacy.

(b) The program of education and training shall be outlined in a written plan and shall include a final examination covering at a minimum the topics listed in Subsection (1)(a) above.

(2) The written outline of the training program including the examination shall be available to the division and board upon request.

R156-17a-305. Licensure - Pharmacy Technician - Examinations.

(1) In accordance with Subsection 58-17a-302(4)(e)((ii)(B), the examinations which must be passed by all applicants applying for licensure as a pharmacy technician are:

(a) the Utah Pharmacy Technician Law and Rule Examination with a passing score of at least 75; and

(b) the National Pharmacy Technician Certification Examination with a passing score as established by the Pharmacy Technician Certification Board.

R156-17a-306. Licensure - Pharmacy Intern - Education.

(1) In accordance with Subsection 58-17a-302(5)(a)(i), the approved program is one which is accredited by the American Council on Pharmaceutical Education.

(2) In accordance with Subsection 58-17a-302(5)(b), the preliminary educational qualifications are as defined in Subsection 58-17a-302(5)(b).

(3) In accordance with Subsection 58-17a-302(5)(b), a recognized college or school of pharmacy is one which has a pharmacy program accredited by the American Council on Pharmaceutical Education.

R156-17a-307. Licensure - Preceptor Approval.

In accordance with Subsection 58-17a-102(45), the requirements which must be met by a licensed pharmacist to be approved as a preceptor are:

(1) hold a Utah pharmacist license that is active and in good standing;

(2) have been engaged in active practice as a licensed pharmacist for not less than two years immediately preceding the application for approval as a preceptor, except if employed as a professional experience program coordinator in a pharmacy program accredited by the American Council on Pharmaceutical Education; and

(3) have not been under any sanction at any time which sanction is considered by the division or board to have been of such a nature that the best interests of the intern and the public would not be served by approving the licensee as a preceptor.

R156-17a-308. Licensure - Administrative Inspection.

In accordance with Subsections 58-1-203(2), 58-1-301(3), 58-17a-303(4)(d) and Section 58-17a-103, an administrative inspection may be:

(1) an onsite inspection; or

(2) a self-report inspection completed by the pharmacist-in-charge on an audit form supplied by the division.

R156-17a-309. Licensure - Meet with the Board.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), an applicant for licensure under Title 58, Chapter 17a may be required to meet with the State Board of Pharmacy for the purpose of evaluating the applicant's qualifications for licensure.

R156-17a-310. Licensure - Out-of-state Mail Order Pharmacy.

In accordance with Subsections 58-1-203(2), 58-1-301(3), 58-17a-303(2)(e) and 58-17a-303(4)(d), the application for licensure as an out-of-state mail order pharmacy shall supply sufficient information concerning the applicant's standing in its state of domicile to permit the division and the board to determine the applicant's qualification for licensure in Utah. Such information shall include the following:

(1) a certified letter from the licensing authority of the state in which the pharmacy is located attesting to the fact that the pharmacy is licensed in good standing and is in compliance with all laws and regulations of that state;

(2) an affidavit affirming that the applicant will cooperate with all lawful requests and directions of the licensing authority of the state of domicile relating to the shipment, mailing or delivery of dispensed legend drugs into Utah; and

(3) a copy of the most recent state inspection showing the status of compliance with laws and regulations for physical facility, records, and operations.

R156-17a-311. Licensure - Branch Pharmacy.

In accordance with Subsections 58-1-203(2), 58-1-301(3) and Section 58-17a-614, the qualifications for licensure as a branch pharmacy include the following:

(1) The division in collaboration with the board shall designate the location of each branch pharmacy. The following shall be considered in granting such designation:

(a) the distance between or from nearby alternative pharmacies and all other factors affecting access of persons in the area to alternative pharmacy resources;

(b) the availability at the location of qualified persons to staff the pharmacy consistent with Section R156-17a-609 of these rules;

(c) the availability and willingness of a parent pharmacy and supervising pharmacist to assume responsibility for the branch pharmacy;

(d) the availability of satisfactory physical facilities in which the branch pharmacy may operate; and

(e) the totality of conditions and circumstances which surround the request for designation.

(2) A branch pharmacy shall be licensed as a retail pharmacy branch of an existing retail, hospital, or institutional pharmacy licensed by the division.

(3) The application for designation of a branch pharmacy shall be submitted by the licensed pharmacy seeking such designation. In the event more than one licensed pharmacy makes application for designation of a branch pharmacy location at a previously undesignated location, the division in collaboration with the board, shall review all applications for designation of the branch pharmacy and, if the location is approved, shall approve for licensure the applicant determined best able to serve the public interest.

(4) The application shall include the following:

(a) complete identifying information concerning the applying parent pharmacy;

(b) complete identifying information concerning the designated supervising pharmacist employed at the parent pharmacy;

(c) address and description of the facility in which the branch pharmacy is to be located;

(d) a specific formulary to be stocked indicating with respect to each prescription drug the name, the dosage strength and dosage units in which the drug will be prepackaged;

(e) complete identifying information concerning each person located at the branch pharmacy who will dispense prescription drugs in accordance with the approved protocol; and

(f) protocols under which the branch pharmacy will operate and its relationship with the parent pharmacy to include the following:

(i) the conditions under which prescription drugs will be stored, used, and accounted for;

(ii) the method by which the drugs will be transported from parent pharmacy to the branch pharmacy and accounted for by the branch pharmacy;

(iii) a description of how records will be kept with respect to:

(A) formulary;
(B) changes in formulary;
(C) record of drugs sent by the parent pharmacy;
(D) record of drugs received by the branch pharmacy;
(E) record of drugs dispensed;
(F) periodic inventories; and
(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.

R156-17a-312. Licensure - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer.

In accordance with Subsections 58-1-203(2), 58-1-301(3), and 58-17a-303(2)(h) and (i), the requirements for licensure as a pharmaceutical wholesaler/distributor or pharmaceutical manufacturer are defined, clarified, or established as follows:

(1) Each applicant for licensure as a pharmaceutical wholesaler/distributor or pharmaceutical manufacturer shall provide the following information:

(a) the name, full business address and telephone number;

(b) identification of all trade and business names used by the applicant;

(c) addresses, telephone number and the names of contact persons at all locations in the state in which prescription drugs are located, stored, handled, distributed or manufactured;

(d) a full description of the ownership of the applicant including business type/form, names and identifying information concerning owners, partners, stockholders if not a publicly held company, names and identifying information concerning company officers, and directors and management; and

(e) other information necessary to enable the division in collaboration with the board to evaluate the requirements in Subsection (2) below.

(2) In considering whether to grant a license to an applicant as a pharmaceutical wholesaler/distributor or pharmaceutical manufacturer, the division shall consider the public interest by examining:

(a) any convictions of the applicant under any federal, state or local laws relating to the distribution or manufacturing of prescription drugs, drug samples, controlled substances or controlled substance precursors;

(b) any convictions of a criminal offense or a finding of unprofessional conduct which when considered with the activity of distributing or manufacturing prescription drugs indicates there is or may reasonably be a threat to the public health, safety or welfare if the applicant were to be granted a license;

(c) the applicant's past experience in the distribution or manufacture of prescription drugs including controlled substances to determine whether the applicant might reasonably be expected to be able to engage in the competent and safe distribution and manufacture of prescription drugs;

(d) whether the applicant has ever furnished any false or misleading information in connection with the application or the past activities of the applicant in connection with the distribution or manufacture of prescription drugs;

(e) whether the applicant has been the subject of any action against any license to engage in distribution or manufacture of prescription drugs;

(f) compliance with licensing requirements under any previously granted license to engage in distribution or manufacture of prescription drugs;

(g) compliance with requirements under federal, state or local law to make available to any regulatory authority those records concerning distribution or manufacture of prescription drugs; and

(h) any other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant to safely and competently engage in the practice of distributing or manufacturing prescription drugs.

(3) The responsible officer or management employee who is responsible for the supervision of the applicant consistent with Section R156-17a-612 shall be identified on the application.

R156-17a-313. Continuing Education - Pharmacist.

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created a continuing education requirement as a condition for renewal or reinstatement of pharmacist licenses issued under Title 58, Chapter 17a.

(2) Continuing education shall consist of 24 hours of qualified continuing professional education in each preceding renewal period.

(3) The required number of hours of qualified continuing professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified continuing professional education shall consist of:

(a) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses presented by an institution, individual, organization, association, corporation, or agency that has been approved by the American Council on Pharmaceutical Education (ACPE);

(b) programs accredited by other nationally recognized healthcare accrediting agencies; and

(c) educational meetings sponsored by the Utah Pharmaceutical Association or Utah Society of Health-System Pharmacists.

(5) Credit for qualified continuing professional education shall be recognized in accordance with the following:

(a) a minimum of eight hours shall be obtained through attendance at lectures, seminars or workshops; and

(b) a minimum of six hours shall be in drug therapy or patient management.

(6) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

R156-17a-314. Continuing Education - Pharmacy Technician.

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created a continuing education requirement as a condition for renewal or reinstatement of pharmacy

technician licenses issued under Title 58, Chapter 17a.

(2) Continuing education shall consist of eight hours of qualified continuing professional education in each preceding renewal period.

(3) The required number of hours of qualified continuing professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified continuing professional education shall consist of:

(a) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses sponsored or approved by an institution, individual, organization, association, corporation, or agency that has been approved by the American Council on Pharmaceutical Education (ACPE);

(b) programs accredited by other nationally recognized healthcare accrediting agencies; and

(c) educational meetings sponsored by the Utah Pharmaceutical Association or the Utah Society of Health-System Pharmacists.

(5) Documentation of current Pharmacy Technician Certification Board certification will count as meeting the requirement for continuing education.

(6) Credit for qualified continuing professional education shall be recognized in accordance with the following:

(a) a minimum of four hours shall be obtained through attendance at lectures, seminars or workshops.

(7) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

R156-17a-315. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 17a is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-17a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any provision of the American Pharmaceutical Association Code of Ethics, October 1994, which is hereby incorporated by reference;

(2) failing to comply with the Food and Drug Administration Compliance Policy Guideline 460.200, March 16, 1992, which is hereby incorporated by reference;

(3) failing to comply with the continuing education requirements set forth in these rules;

(4) failing to provide the division with a current mailing address within a reasonable period of time following any change of address;

(5) defaulting on a student loan;

(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy; and

(7) failing to comply with administrative inspections.

R156-17a-601. Operating Standards - Pharmacy Technician - Scope of Practice.

In accordance with Subsection 58-17a-102(42), the scope of practice of a pharmacy technician is defined as follows:

(1) The pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:

(a) receiving written prescriptions;

(b) taking refill orders;

(c) entering and retrieving information into and from a database, or patient profile;

(d) preparing labels;

(e) retrieving medications from inventory;

(f) counting and pouring into containers;

(g) placing medications into patient storage containers;

(h) affixing labels;

(i) compounding; and

(j) other non-judgmental tasks.

(2) The pharmacy technician shall not receive new oral prescriptions or medication orders nor perform drug utilization reviews.

(3) The licensed pharmacist shall provide general supervision as defined in Subsection 58-17a-102(17) to no more than two pharmacy technicians actually on duty at any one time.

R156-17a-602. Operating Standards - Pharmacy Intern - Scope of Practice.

In accordance with Subsections 58-17a-102(41) and 58-17a-102(41), the scope of practice of a pharmacy intern includes the following:

(1) If a pharmacy intern ceases to meet all requirements for intern licensure, he shall surrender his pharmacy intern license to the division within 60 days unless an extension is requested and granted by the Division in collaboration with the Board.

(2) A pharmacy intern may act as a pharmacy intern only under the supervision of an approved preceptor as set forth in Subsection 58-17a-102(45) and Section R156-17a-603.

R156-17a-603. Operating Standards - Approved Preceptor.

In accordance with Subsection 58-17a-601(1), the following shall apply to an approved preceptor:

(1) He may supervise more than one intern, however, a preceptor may supervise only one intern actually on duty in the practice of pharmacy at any one time.

(2) He shall maintain adequate records to demonstrate the number of internship hours completed by the intern and an evaluation of the quality of the intern's performance during the internship.

(3) The preceptor shall complete the preceptor section of a "Utah Pharmacy Intern Experience Affidavit:"at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded and provide that affidavit to the division.

(4) The preceptor shall be responsible for the intern's acts related to the practice of pharmacy while practicing as a

pharmacy intern under his or her supervision.

(5) The preceptor shall use "The Internship Experience, A Manual for Pharmacy Preceptors and Interns", August 1980, published by the NABP or an equivalent manual while providing the intern experience for the intern.

R156-17a-604. Operating Standards - Supportive Personnel.

(1) In accordance with Subsection 58-17a-102(50)(a), the duties of supportive personnel are further defined as follows:

(a) Supportive personnel may assist in any tasks not related to drug preparation or processing including:

(i) stock ordering and restocking;

(ii) cashiering;

(iii) billing;

(iv) filing;

(v) housekeeping; and

(vi) delivery.

(b) Supportive personnel shall not enter information into a patient profile nor accept refill information.

(2) In accordance with Subsection 58-17a-102(50)(b), the supervision of supportive personnel is defined as follows:

(a) All supportive personnel shall be under the supervision of a licensed pharmacist.

(b) The licensed pharmacist shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being performed.

(3) In accordance with Subsection 58-17a-601(1), a pharmacist, pharmacy intern, or pharmacy technician whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

R156-17a-605. Operating Standards - Medication Profile System.

In accordance with Subsections 58-17a-601(1) and 58-17a-604(1), the following operating standards shall apply with respect to medication profile systems:

(1) Patient profiles, once established, shall be maintained by a pharmacist in a pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record.

(2) Information to be included in the profile shall be determined by a responsible pharmacist at the drug outlet but shall include as a minimum:

(a) full name of patient, address, telephone number, date of birth or age and gender;

(b) patient history where significant, including known allergies and drug reactions, and a comprehensive list of medications and relevant devices;

(c) a list of all prescription drugs obtained by the patient at the pharmacy including;

(i) name of prescription drug;

(ii) strength of prescription drug;

(iii) quantity dispensed;

(iv) date of filling or refilling;

(v) charge for the prescription drug as dispensed to the patient; and

(d) any additional comments relevant to the patient's drug use.

(3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern, or pharmacy technician.

R156-17a-606. Operating Standards - Patient Counseling.

In accordance with Subsection 58-17a-601(1), standards for patient counseling established in Section 58-17a-612 include the following:

(1) Patient counseling shall include when appropriate the following elements:

(a) the name and description of the prescription drug;

(b) the dosage form, dose, route of administration, and duration of drug therapy;

(c) intended use of the drug and expected action;

(d) special directions and precautions for preparation, administration, and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

(i) action to be taken in the event of a missed dose;

(j) pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug; and

(k) the date after which the prescription should not be taken or used.

(2) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.

(3) A pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.

(4) The offer to counsel shall be documented and said documentation shall be available to the division and the board.

R156-17a-607. Operating Standards - Prescriptions.

In accordance with Subsection 58-17a-601(1), the following shall apply to prescriptions:

(1) A prescription issued by an authorized licensed practitioner, if communicated by an agent or employee of that practitioner upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist or pharmacy intern.

(2) Prescription files, including refill information, shall be maintained for a minimum of five years by either a manual filing of written prescriptions or by permanent electronic record.

(3) Prescriptions having a remaining authorization for refill may be transferred by the pharmacist at the outlet holding the prescription to a pharmacist at another outlet upon the authorization of the patient to whom the prescription was issued. The transferring pharmacist and receiving pharmacist shall act diligently to ensure that the total number of authorized refills is not exceeded.

(4) Prescriptions for terminal patients in licensed hospices,

home health agencies, or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness.

R156-17a-608. Operating Standards - Pharmacist-in-charge.

All drug outlets, except pharmaceutical manufacturers and pharmaceutical wholesaler/distributors, and all pharmaceutical administration facilities shall have a pharmacist-in-charge.

R156-17a-609. Operating Standards - Branch Pharmacy.

In accordance with Section 58-17a-614, the operating standards for branch pharmacies include the following:

(1) Branch pharmacies may be staffed only by the following persons holding current licenses to practice:

(a) physicians and surgeons;

(b) osteopathic physicians and surgeons;

(c) advanced practice registered nurses; and

(d) physician assistants.

(2) Prescription drugs supplied to the branch pharmacy by the parent pharmacy shall be prepackaged having a label affixed to the container by a licensed pharmacist at the parent pharmacy. The label shall contain all information required by law on a prescription label except the date dispensed, identifying information concerning the patient, specific dosage instructions and identification of the dispensing person. Excepted information shall be added to the label by a branch pharmacy person in one of the licensure classifications listed above at the time the prescription drug is dispensed.

(3) The branch pharmacy shall be personally visited by the supervising pharmacist or his designee who is also a licensed Utah pharmacist not less than once in each month for the purpose of auditing the prescription drug inventory and branch pharmacy procedures against the approved protocol. A record of each visit and the findings shall be maintained at the branch pharmacy and at the parent pharmacy.

(4) The parent pharmacy shall notify the division in writing and receive approval for any change in branch pharmacy licensure qualifications or operating standards.

R156-17a-610. Operating Standards - Drug Outlets.

In accordance with Subsection 58-17a-601(1), standards for the operations of drug outlets include the following:

(1) Any drug outlet licensed under the Pharmacy Practice Act, Title 58, Chapter 17a, shall be well lighted, well ventilated, clean and sanitary.

(2) The dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any rest room facilities.

(3) The drug outlet shall be equipped to permit the orderly storage of prescription drugs and devices in a manner to permit clear identification, separation, and easy retrieval of products, and an environment necessary to maintain the integrity of the product inventory.

(4) The drug outlet shall be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility.

(5) The drug outlet shall be stocked with the quality and quantity of product necessary for the facility to meet it's scope of practice in a manner consistent with the public health, safety and welfare.

(6) The drug outlet shall be equipped with a security system to permit detection of entry at all times when the facility is closed.

(7) Drug outlets engaged in extensive compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility.

(8) The drug outlet shall have recent editions of the following reference publications in such quantity and in such places as to make them readily available to facility personnel:

(a) the Utah Pharmacy Practice Act;

(b) the Utah Pharmacy Practice Act Rules;

(c) the Utah Controlled Substance Act;

(d) the Utah Controlled Substance Act Rules;

(e) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USPDI;

(f) current FDA Approved Drug Products (orange book);

(g) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility; and

(h) "The Intern Experience, A Manual for Pharmacy Preceptors and Interns", August 1980, published by the National Association of Boards of Pharmacy, if pharmacy interns are present.

(9) The drug outlet shall post in view of the public the license of the facility and the license or a copy of the license of each pharmacist, pharmacy intern, and pharmacy technician who is employed in the facility, but may not post the license of any pharmacist, pharmacy intern, or pharmacy technician not actually employed in the facility.

(10) Drug outlets initially licensed or substantially remodeled on or after September 1, 1992, shall have a counseling area to allow for confidential patient counseling, when appropriate.

(11) If the pharmacy is located within a larger facility such as a grocery or department store, and a licensed Utah pharmacist is not immediately available in the facility, the pharmacy shall not remain open to pharmacy patients and shall be locked in such a way as to bar entry to the public or any non-pharmacy personnel.

(12) All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry to the public or any non-pharmacy personnel when the pharmacy is closed.

(13) Only a licensed Utah pharmacist or his designee shall have access to the pharmacy when the pharmacy is closed.

R156-17a-611. Operating Standards - Nuclear Pharmacy.

In accordance with Subsections 58-17a-303(4)(d) and 58-17a-601(1), the operating standards for nuclear pharmacies include the following:

(1) A nuclear pharmacy shall have the following:

(a) a current Utah Radioactive Materials License; and

(b) adequate space and equipment commensurate with the scope of services required and provided.

(2) Nuclear pharmacies shall only dispense radiopharmaceuticals which comply with acceptable standards of quality assurance.

(3) Nuclear pharmacies shall maintain a library commensurate with the level of radiopharmaceutical service to be provided.

(4) A licensed Utah pharmacist shall be immediately available on the premises at all times when the facility is open or available to engage in the practice of pharmacy.

(5) In addition to Utah licensure, the pharmacist shall be currently certified by the Board of Pharmaceutical Specialties in Nuclear Pharmacy or have equivalent classroom and laboratory training and experience as required by the Utah Radiation Control Rules.

(6) This rule does not prohibit:

(a) a licensed pharmacy intern or technician form acting under the direct supervision of an approved preceptor who meets the requirements to supervise a nuclear pharmacy; or

(b) a Utah Radioactive Materials licensee from possessing and using radiopharmaceuticals for medical use.

(7) A hospital nuclear medicine department or an office of a physician/surgeon, osteopathic physician/surgeon, veterinarian, podiatric physician, or dentist that has a current Utah Radioactive Materials License does not require licensure as a nuclear pharmacy.

R156-17a-612. Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah.

In accordance with Subsection 58-17a-601(1), the operating standards for pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensee includes the following:

(1) A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs.

(2) A separate license shall be obtained for wholesale distribution activity and manufacturing activity.

(3) The licensee need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a responsible officer or management employee.

(4) There has not been established minimum requirements for persons employed by persons engaged in the distribution or manufacture of prescription drugs; however, this does not relieve the person who engages in the distribution of prescription drugs within the state or in interstate commerce into or from the state, or those engaged in the manufacture of prescription drugs in the state or in interstate commerce into or from the state from ensuring that persons employed by them have appropriate education, experience, or both to engage in the duties to which they are assigned and do so in a manner which does not jeopardize the public health, safety or welfare.

(5) All facilities associated with the distribution or manufacture of prescription drugs shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed, or in any other way unsuitable for use or entry into distribution or manufacture;

(e) be maintained in a clean and orderly condition, and

(f) be free from infestation by insects, rodents, birds, or vermin of any kind.

(6) In regard to security, all facilities used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building and life/safety codes, and control access of persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs or prescription drug precursors are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification to appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacture of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

(7) In regard to storage, all facilities shall provide for storage of prescription drugs and prescription drug precursors in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the United States Pharmacopeia/National Formulary (USP/NF), 1995 edition, through Supplement 1, dated January 1, 2000, which is hereby incorporated by reference;

(b) if no storage requirements are established for a specific prescription drug or prescription drug precursor, the products shall be held in a condition of controlled temperature and humidity as defined in the USP/NF to ensure that its identity, strength, quality, and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs or prescription drug precursors are held to permit review of the record and ensure that the products have not been subjected to conditions which are outside of established limits.

(8) In regard to examination of materials, each facility shall provide that:

(a) upon receipt, each outside shipping container containing prescription drugs or prescription drug precursors shall be visually examined for identity and to prevent the acceptance of prescription drugs or prescription drug precursors that are contaminated, reveal damage to the containers or are otherwise unfit for distribution; and

(b) each outgoing shipment shall be carefully inspected for identity of the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.

(9) In regard to returned, damaged, and outdated prescription drugs, each facility shall provide that:

(a) prescription drugs or prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs or prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(b) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier; and

(c) if the condition or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality, or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing, or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality, and purity.

(10) In regard to record keeping, pharmaceutical wholesaler/distributors and pharmaceutical manufacturers shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped, or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver, and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities, and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(11) In regard to written policies and procedures, pharmaceutical wholesaler/distributors and pharmaceutical manufacturers shall establish, maintain, and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacture, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first, with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the Food and Drug Administration of other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action by the pharmaceutical wholesaler/distributor or pharmaceutical manufacturer to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacing of existing product with an improved product or new package design;

(c) a procedure to ensure that a pharmaceutical wholesaler/distributor or pharmaceutical manufacturer prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

(e) a procedure providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state, or local authorities for a period of two years after disposition of the product.

(12) In regard to responsible persons, pharmaceutical wholesaler/distributors and pharmaceutical manufacturers shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers, and other persons in charge of wholesale drug distribution, manufacture, storage, and handling, which lists shall include a description of their duties and a summary of their background and qualifications.

(13) In regard to compliance with law, pharmaceutical wholesalers/distributors and pharmaceutical manufacturers shall:

(a) operate in compliance with applicable federal, state and local laws and regulations;

(b) permit the state licensing authority and authorized federal, state, and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles, and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtain a controlled substance license from the division and register with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacture of controlled substances, and shall comply with all federal, state and local regulations applicable to the distribution or manufacture of controlled substances.

(14) In regard to salvaging and processing, pharmaceutical wholesalers/distributors and pharmaceutical manufacturers shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(15) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a pharmaceutical wholesaler/distributor or a pharmaceutical manufacturer, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

R156-17a-613. Operating Standards - Animal Euthanasia Agency.

In accordance with Subsection 58-17a-601(1), operating standards for an animal euthanasia agency concerning the use of prescription drugs shall include:

(1) A veterinarian licensed in Utah shall supervise the use of prescription drugs used for animal euthanasia.

(2) The veterinarian shall be responsible for:

(a) identifying each euthanasia drug for which authorization is requested;

(b) identifying the location where euthanasia drugs and records will be maintained;

(c) identifying each person to be authorized to purchase, possess, or administer euthanasia drugs;

(d) describing the training program for each person authorized to purchase, possess, or administer euthanasia drugs as well as attesting to be responsible for that training; and

(e) maintaining euthanasia drug records.

R156-17a-614. Operating Standards - Analytical Laboratory.

In accordance with Subsection 58-17a-601(1), operating standards for an analytical laboratory concerning the use of prescription drugs shall include:

(1) the supervising laboratory director is identified; and

(2) the protocols describing how authorized prescription drugs will be purchased, stored, used, and accounted for are available for division inspection.

R156-17a-615. Operating Standards - Pharmaceutical Researcher.

In accordance with Subsection 58-17a-601(1), operating standards for a pharmaceutical researcher concerning the use of prescription drugs shall include:

(1) requesting and receiving authorization for each drug to be bought or used; and

(2) the protocols describing how authorized prescription drugs will be purchased, stored, used, and accounted for are available for division inspection.

R156-17a-616. Operating Standards - Pharmaceutical Dog Trainer.

In accordance with Subsection 58-17a-601(1), operating standards for a pharmaceutical dog trainer concerning the use of prescription drugs shall include:

(1) affiliation with a law enforcement official from a Utah law enforcement agency who is responsible for the purchase, storage, and use of the authorized prescription drugs;

(2) requesting and receiving authorization for each drug to be bought or used; and

(3) the protocols describing how authorized prescription drugs will be purchased, stored, used, and accounted for are available for division inspection.

R156-17a-617. Operating Standards - Issuing Prescription Orders by Electronic Means.

In accordance with Subsection 58-17a-102(46), prescription orders may be issued by electronic means of communication according to the following:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to the rules of the federal Drug Enforcement Administration.

(2) Prescription orders for noncontrolled substances received by electronic means of communication may be dispensed by a pharmacist or pharmacy intern only if all of the following conditions are satisfied:

(a) All electronically transmitted prescription orders shall include the following:

(i) all information that is required to be contained in a prescription order pursuant to Section 58-17a-602;

(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time, and fax number of the sender; and

(iii) the name of the pharmacy intended to receive the transmission.

(b) The prescription order shall be transmitted by an authorized prescriber or his designated agent.

(c) The pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. The pharmacist is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a licensed prescriber which has been transmitted to the dispensing pharmacy before filling it, whenever there is a question.

(d) An electronically transmitted prescription order that

meets the requirements above shall be deemed to be the original prescription.

(3) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

(4) No agreement between a prescriber and a pharmacy shall require that prescription orders be transmitted by electronic means from the prescriber to only that pharmacy.

(5) Wholesalers, distributors, manufacturers, pharmacists and pharmacies shall not supply electronic equipment to any prescriber for transmitting prescription orders.

(6) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice and shall be directed at the option of the patient.

(7) Prescription orders electronically transmitted to the pharmacy by the patient shall not be filled or dispensed.

(8) A prescription order may be transferred between pharmacies by computer but not by facsimile transmission. A prescription must be transmitted by facsimile from the site of origination to the dispensing pharmacy. Transmission by facsimile between pharmacies is not allowed except that a branch pharmacy may fax to its parent pharmacy.

R156-17a-618. Operating Standards - Sterile Pharmaceuticals.

In accordance with Subsection 58-17a-601(1), the following applies with respect to sterile pharmaceuticals:

(1) Pharmacies in general acute hospitals as defined in Title 26 that prepare sterile pharmaceuticals shall conform to the Joint Commission on Accreditation of Healthcare Organization standards, the American Society of Health-System Pharmacists guidelines, or other standards approved by the board and division.

(2) The following standards shall apply to all other pharmacies preparing sterile pharmaceuticals:

(a) Pharmacies are responsible for correct preparation of sterile products, notwithstanding the location of the patient. All sterile products must be prepared according to the current standards and ethics of the profession.

(b) As a minimum each pharmacy preparing parenteral products shall:

(i) prepare and maintain a policy and procedure manual for the compounding, dispensing and delivery of sterile pharmaceutical prescription drug orders including lot numbers of the components used in compounding sterile prescriptions except for large volume parenterals;

(ii) have a laminar flow hood certified at least annually by an independent contractor;

(iii) have appropriate disposal procedures and containers;

(iv) have biohazard cabinetry when cytotoxic drug products are prepared;

(v) have temperature-controlled delivery container;

(vi) have infusion devices, if appropriate;

(vii) have supplies and other necessary resources adequate to maintain an environment suitable for the aseptic preparation of sterile products;

(viii) have sufficient current reference materials related to sterile products to meet the needs of pharmacy staff; and

(ix) have written procedures requiring sampling for microbial contamination.

(c) The pharmacist-in-charge of each pharmacy preparing parenteral products shall assure that any compounded sterile pharmaceutical be shipped or delivered to a patient in appropriate temperature-controlled delivery containers with appropriate monitors and stored appropriately in the patient's home. If appropriate, the pharmacist must demonstrate or document the patient's or patient's agent's training and competency in managing this type of therapy provided by the pharmacist to the patient in the home environment. A pharmacist must be involved in the patient's or patient's agent's training process in any area that relates to drug compounding, labeling, storage, stability, or incompatibility. The pharmacist must be responsible for seeing that the patient's or patient's agent's competency in the above areas is reassessed on an ongoing basis.

R156-17a-619. Operating Standards - Pharmaceutical Administration Facility.

In accordance with Subsection 58-17a-601(1), the following applies with respect to prescription drugs which are held, stored, or otherwise under the control of a pharmaceutical administration facility for administration to patients:

(1) The licensed pharmacist shall provide consultation on all aspects of pharmacy services in the facility; establish a system of records of receipt and disposition of all controlled substances in sufficient detail to enable an accurate reconciliation; and determine that drug records are in order and that an account of all controlled substances is maintained and periodically reconciled.

(2) Authorized destruction of all prescription drugs shall be witnessed by the medical or nursing director or a designated physician or registered nurse employed in the facility and the supervising pharmacist and must be in compliance with DEA regulations.

(3) Prescriptions for patients in the facility can be verbally requested by a licensed medical practitioner and may be entered as the physician's order; but, the practitioner must personally sign the order in the facility record within 72 hours, if a Schedule II controlled substance, and within 30 days if another prescription drug. The physician's verbal order may be copied and forwarded to a pharmacy for dispensing and may serve as the pharmacy's record of the prescription order.

(4) Prescriptions for controlled substances for patients in pharmaceutical administration facilities shall be dispensed according to the Utah Controlled Substance Act, Title 58, Chapter 37, and the Controlled Substance Rules of the Division of Occupational and Professional Licensing, R156-37.

(5) Emergency drug kit.

(a) An emergency drug kit may be used by pharmaceutical administration facilities. The emergency drug kit shall be considered to be a physical extension of the pharmacy supplying the emergency drug kit and shall at all times remain under the ownership of that pharmacy.

(b) The contents and quantity of drugs and supplies in the emergency drug kit shall be determined by the Medical Director or Director of Nursing of the pharmaceutical administration facility and the pharmacist-in-charge of the pharmacy.

(c) A copy of the approved list of contents shall be

conspicuously posted on or near the kit.

(d) The emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner.

(e) Records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the facility and the pharmacy.

(f) The pharmacy shall be responsible for ensuring proper storage, security and accountability of the emergency kit and shall ensure that:

(i) the emergency kit is stored in a locked area and is locked itself; and

(ii) emergency kit drugs are accessible only to licensed physicians, physician assistants, and nurses employed by the facility.

(g) The contents of the emergency kit, the approved list of contents, and all related records shall be made freely available and open for inspection to appropriate representatives of the division and the Utah Department of Health.

R156-17a-620. Operating Standards - Pharmacist Administration - Training.

(1) In accordance with Subsection 58-17a-502(9), appropriate training for the administration of a prescription drug includes:

(a) having current BCLS certification; and

(b) having successfully completed a training program which includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and

(iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs;

(b) curriculum-based programs from an ACPE accredited college of pharmacy; and

(c) state or local health department programs.

KEY: pharmacists, licensing, pharmacies*

February 15, 2000 **58-17a-101**
58-37-1
58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-24a. Physical Therapist Practice Act Rules.
R156-24a-101. Title.

These rules are known as the "Physical Therapist Practice Act Rules".

R156-24a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 24a, as used in Title 58, Chapters 1 and 24a or these rules:

(1) "Approved course work evaluation tool", as used in Subsection R156-24a-302a(3), means the FSBPT's June 1997 revised publication entitled "A Course Work Evaluation Tool For Persons Who Received Their Physical Therapy Education Outside the United States", which is hereby adopted and incorporated by reference.

(2) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(3) "FSBPT" means the Federation of State Licensing Boards of Physical Therapy.

(4) "Joint mobilization", as used in Subsection 58-24a-104(2)(b), means passive and active movements of the joints of a patient, including the spine, to increase the mobility of joint systems; but, does not include specific vertebral adjustment and manipulation of the articulation of the spine by those methods or techniques which are generally recognized as the classic practice of chiropractic.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 24a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-24a-502.

R156-24a-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 24a.

R156-24a-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-24a-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-24a-109(2)(b), the accredited school of physical therapy for a physical therapist shall be accredited by CAPTE.

(2) In accordance with Subsection 58-24a-102(5), a physical therapist assistant shall complete a physical therapy assistant program accredited by CAPTE.

(3) In accordance with Section 58-1-302, an applicant who has been licensed in a foreign country whose degree was not accredited by CAPTE shall document that his education is equal to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy which shall use the approved course work evaluation tool. Educational deficiencies may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas.

R156-24a-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-24a-109(2), the examination which shall be required for each applicant for licensure, including endorsement applicants, as a physical therapist shall consist of the following:

(a) the FSBPT's National Physical Therapy Examination with a passing score of at least 600 as established by the FSBPT; and

(b) the Utah Physical Therapy Law Examination with a passing score of at least 75%.

(2) An applicant must have successfully completed all academic and associated clinical requirements before being eligible to sit for the examinations required for Utah licensure.

R156-24a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 24a is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-24a-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) violating any provision of the American Physical Therapy Association's Code of Ethics, last amended January 1997, which is hereby adopted and incorporated by reference; and

(2) not providing supervision as set forth in Section R156-24a-503.

R156-24a-503. Physical Therapist Supervisory Authority and Responsibility.

In accordance with Section 58-24a-112, the supervisory responsibilities of a physical therapist include the following:

(1) Adequate supervision requires at a minimum that a supervising physical therapist perform the following activities:

(a) designate or establish channels of written and oral communication;

(b) interpret available information concerning the individual under care;

(c) provide the initial evaluation;

(d) develop a plan of care, including short and long term goals;

(e) select and delegate appropriate tasks of the plan of care;

(f) assess competence of supportive personnel in the delegated tasks;

(g) identify and document precautions, special problems, contraindications, anticipated progress, and plans for reevaluation; and

(h) reevaluate, adjust plan care when necessary, perform final evaluation, and establish a follow-up plan.

(2) Supervision by a physical therapist of a physical therapist assistant shall include the following conditions:

(a) an initial visit shall be made by the physical therapist for evaluation of the patient and establishment of a plan of care; and

(b) supervision shall be on site by the physical therapist

every sixth treatment but no longer than every 30 days from the time of the physical therapist's last evaluation or treatment.

(3) Duties delegated by a physical therapist to a physical therapist assistant may include:

(a) providing physical therapy services according to a plan of care established by the licensed physical therapist;

(b) adjusting a specific treatment procedure in accordance with changes in patient status only with prior evaluation and approval by the supervising physical therapist;

(c) responding to inquiries regarding patient status to appropriate parties within the plan of care established by a supervising physical therapist, but not interpreting data beyond the scope of his physical therapist assistant education; and

(d) referring inquires regarding patient prognosis to the supervising physical therapist.

(4) Duties delegated by a physical therapist to a physical therapist aide may include:

(a) engaging in assembly and disassembly, maintenance and transportation, preparation and all other operational activities relevant to equipment and accessories necessary for treatment; and

(b) providing only that type of elementary and direct patient care which the patient and family members could reasonably be expected to learn and perform.

(5) A physical therapist aide may not interpret referrals, perform evaluations or evaluate procedures, initiate or adjust treatment programs, assume responsibility for planning patient treatment care, perform debridement, topical medical application, or joint mobilization.

(6) Each physical therapist assistant and physical therapist aide shall clearly identify himself as a non-licensed person and shall not present or hold himself out in any way as a physical therapist.

KEY: licensing, physical therapy

March 9, 1999	**58-24a-101**
Notice of Continuation May 12, 1997	**58-1-106(1)**
	58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-38. Residence Lien Restriction and Lien Recovery Fund Rules.
R156-38-101. Title.

These rules are known as the "Residence Lien Restriction and Lien Recovery Fund Act Rules."

R156-38-102. Definitions.

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing, which shall apply to these rules, as used in these rules:

(1) "Claimant" means a person who submits an application or claim for payment from the fund.

(2) "Necessary party" includes the division, on behalf of the fund, and the claimant.

(3) "Owner", as defined in Section 38-11-102(12), does not include any person or developer who builds residences which are offered for sale to the public.

(4) "Permissive party" includes a licensee or qualified beneficiary who will be required to reimburse the fund if a claimant's claim is paid from the fund.

R156-38-103a. Authority - Purpose - Organization.

(1) These rules are adopted by the division under the authority of Section 38-11-103 to enable the division to administer Title 38, Chapter 11, the Residence Lien Restriction and Lien Recovery Fund Act.

(2) The organization of these rules is patterned after the organization of Title 38, Chapter 11.

R156-38-103b. Duties, Functions, and Responsibilities of the Division.

The duties, functions and responsibilities of the division with respect to the administration of Title 38, Chapter 11, shall, to the extent applicable and not in conflict with the Act or these rules, be in accordance with Section 58-1-106.

R156-38-104. Board.

Board meetings shall comply with the requirements set forth in Section R156-1-204.

R156-38-105. Adjudicative Proceedings.

(1) The classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or these rules.

(5) Claims shall be filed with the division and served upon all necessary and permissive parties.

(6) Service of claims or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each registrant to maintain a current address with the division.

(7) A permissive party is required to file a response to a claim against the fund within 30 days of notification by the division of the filing of the claim, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim.

(8) The findings of fact and conclusions of law established by a judgment entered by a civil court or a final order entered by an administrative agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

R156-38-108. Notification of Rights under Title 38, Chapter 11.

(1) A notice in substantially the following form shall prominently appear in an easy-to-read type style and size in every contract between an original contractor and owner and in every notice of claim filed under Section 38-1-7 against the owner of an owner-occupied residence or against an owner-occupied residence:

"X. PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:

(1) the owner entered into a written contract with either a real estate developer or an original contractor;

(2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

(3) the owner paid in full the original contractor or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract."

R156-38-202a. Initial Assessment Procedures.

(1) The initial assessment shall be a flat or identical assessment levied against all qualified beneficiaries to create the fund.

(2) The amount of the initial assessment shall be established by the division and board in accordance with the procedures for a "new program" under Subsection 63-38-3.2(5).

R156-38-202b. Special Assessment Procedures.

(1) Special assessments shall take into consideration the claims history against the fund.

(2) The amount of special assessments shall be established by the division and board in accordance with the procedures set forth in Subsection 38-11-206(1).

R156-38-203. Credit to Claimant Lifetime Cap.

Amounts collected by subrogation under Section 38-11-205 subsequent to a payment from the fund shall be credited to the lifetime cap of a qualified beneficiary or laborer under Subsection 38-11-203(4)(a)(ii) less the costs incurred by the Attorney General in subrogation efforts.

R156-38-204a. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the written contract:

(i) between the owner of the owner-occupied residence or the owner's agent and the original contractor for the performance of qualified services, to obtain the performance of qualified services by others, or for the supervision of the performance by others of qualified services in construction on the residence; or

(ii) between the owner of the owner-occupied residence or the owner's agent and the real estate developer for the purchase of an owner-occupied residence; or

(b) a copy of a civil judgment containing a finding that the owner of the owner-occupied residence entered into a written contract in compliance the requirements of Subsection 38-11-204(3)(a);

(2) if the claim involves an original contractor, documentation that the original contractor is licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(3) one of the following:

(a) an affidavit from the original contractor or real estate developer acknowledging that the owner of the owner-occupied residence paid the original contractor or real estate developer in full in accordance with the written contract and any amendments to the contract;

(b) a copy of a civil judgment containing a finding that the owner of the owner-occupied residence paid the original contractor or real estate developer in full in accordance with the written contract and any amendments to the contract; or

(c) documentation that the claimant has been prevented from satisfying Subsections (a) and (b), together with independent evidence establishing that the owner of the owner-occupied residence paid the original contractor or real estate developer in full in accordance with the written contract and any amendments to the contract;

(4) one or more of the following as required:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against an original contractor, subcontractor or real estate developer described in Subsection 38-11-204(3)(c) to recover monies owed for qualified services performed, filed within 180 days from the date the claimant last provided qualified services; and

(b) a copy of the Notice of Commencement of Action filed with the division; or

(c) documentation that a bankruptcy filing by the original contractor, subcontractor or real estate developer prevented claimant from satisfying Subsections (a) and (b);

(5) one of the following:

(a) a copy of a civil judgment entered in favor of claimant against the original contractor, subcontractor or real estate developer containing a finding that the original contractor, subcontractor or real estate developer failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract; or

(b) documentation that a bankruptcy filing by the original contractor, subcontractor or real estate developer prevented the claimant from obtaining such a civil judgment, together with independent evidence establishing that the original contractor, subcontractor or real estate developer failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract;

(6) one or more of the following as required:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of claimant;

(b) a copy of the return of service of the supplemental order indicating either that service was accomplished on the original contractor, subcontractor or real estate developer or that said contractor or developer could not be located or served;

(c) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; and

(d) documentation that a bankruptcy filing or other action by the original contractor or real estate developer prevented the claimant from satisfying Subparagraphs (a) through (d);

(7) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

(8) one of the following:

(a) an affidavit from the owner establishing that the owner is an owner as defined in Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13);

(b) a copy of a civil judgment containing a finding that the owner is an owner as defined by Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13); or

(c) documentation that the claimant has been prevented from obtaining an owner-occupied residence affidavit together

with independent evidence establishing that the owner is an owner as defined by Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13).

(9) one or more of the following:

(a) a copy of invoices supporting the qualified services claimed;

(b) a copy of a civil judgment containing a finding as to the dates the qualified services claimed were provided and the value of the qualified services claimed; or

(c) independent evidence of the dates the qualified services were provided and the value of the claimed qualified services.

(10) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(11) A separate claim must be filed for each residence, and a separate filing fee must be paid for each claim.

R156-38-204b. Format for Notice of Commencement of Action.

The Notice of Commencement required under Subsection R156-38-204a(5)(b) shall be in substantially the following format:

TABLE I

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

John Doe, Plaintiff	: :	Notice of Commencement of Action
-vs-	:	NCA No.
Richard Roe, Defendant	:	

Notice is hereby provided of the filing of Case No. (number) on (date) before (Court).

Brief explanation of nature of case:

Address of defendant:

Name and address of potential fund claimant:

Name and address of original contractor, subcontractor, and/or real estate developer described in Subsection 38-11-204(3)(c):

For each owner-occupied residence included in the civil action:

Name and address of the owner of the owner-occupied residence;

Street address of the owner-occupied residence;

Amount of damages sought against the owner-occupied residence;

Last date qualified services were provided for the owner-occupied residence by the potential fund claimant:

Signature of Claimant or claimant's representative

Date of signature

R156-38-204c. Claims Against the Fund by Laborers - Supporting Documents.

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the Industrial Commission of the Utah Labor Division for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the Industrial Commission of Utah Labor Division containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant against the employer containing a finding that the employer failed to pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer;

(c) one of the following:

(i) an affidavit from the owner establishing that the owner is an owner as defined in Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13);

(ii) a copy of a civil judgment containing a finding that the owner is an owner as defined by Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13); or

(iii) documentation that the claimant has been prevented from obtaining an owner-occupied residence affidavit together with independent evidence establishing that the owner is an owner as defined by Subsection 38-11-102(12) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(13).

(2) When a laborer makes claim on multiple residences as a result of a single incident of non-payment by the same employer, the division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(5), but may waive additional application and registration fees for claims for the additional residences, where no legitimate purpose would be served by requiring separate filings.

R156-38-204d. Calculation of Costs, Attorney Fees and Interest for Payable Claims.

(1) Payment for qualified services, costs, and interest shall be made as specified in Section 38-11-203.

(2) For claims determined by the division to be payable from the fund, the division shall order payment of attorney fees in an amount not exceeding the following:

(a) If a civil judgment awards a specific dollar amount for attorney fees, the division shall order payment as ordered in the civil judgment, to the extent that the attorney fees are attributable to the owner-occupied residence at issue in the claim.

(b) Otherwise, the division shall order payment of

reasonable attorney fees, documented according to the provisions of Rule 4-505, Utah Code of Judicial Administration, subject to the following limitations:

(i) if the payable amount of qualified services is $3,000 or less, not more than 33% of the value of the qualified services and not exceeding $750;

(ii) if the payable amount of qualified services is greater than $3,000 and $10,000 or less, not more than 25% of the value of qualified services and not exceeding $2,000; or

(iii) if the payable amount of qualified services is greater than $10,000, attorney fees in an amount of not more than 20% of the value of qualified services and not exceeding $7,000.

(3) The above limits may be waived by the director in those unique claims where manifest injustic would otherwise result. The burden is on the claimant to demonstrate manifest injustice.

R156-38-301. Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications.

(1) All license classifications of contractors are determined to be regularly engaged in providing qualified services for purposes of automatic registration as a qualified beneficiary, as set forth in Subsections 38-11-301(1) and (2), with the exception of the following license classifications:

TABLE II

Primary Classification Number	Subclassification Number	Classification
E100		General Engineering Contractor
	S211	Boiler Installation Contractor
	S262	Granite and Pressure Grouting Contractor
S320		Steel Erection Contractor
	S322	Metal Building Erection Contractor
	S323	Structural Stud Erection Contractor
S340		Sheet Metal Contractor
S360		Refrigeration Contractor
S440		Sign Installation Contractor
	S441	Non Electrical Outdoor Advertising Sign Contractor
S450		Mechanical Insulation Contractor
S470		Petroleum System Contractor
S480		Piers and Foundations Contractor
I101		General Engineering Trades Instructor
I102		General Building Trades Instructor
I103		General Electrical Trades Instructor
I104		General Plumbing Trades Instructor
I105		General Mechanical Trades Instructor

(2) Any person holding a license requiring registration in the fund that is on inactive status on the assessment date of any special assessment of the fund, shall be exempt from payment of that specific assessment and any assessment made during the time the license remains on inactive status and the licensee does not engage in the licensed occupation or profession.

(3) Before a licensee on inactive status, who would otherwise be required to pay an assessment, can be reinstated to an active status, the licensee must pay:

(a) the initial assessment of $195 assessed July 1, 1995, if that assessment has never been paid by that licensee; and

(b) the most recent special assessment immediately preceding the date on which the license is reinstated to active status.

R156-38-302. Renewal and Reinstatement Procedures.

(1) Renewal notices required in connection with a special assessment shall be mailed to each registrant at least 30 days prior to the expiration date for the existing registration established in the renewal notice. Unless the registrant pays the special assessment by the expiration date shown on the renewal notice, the registrant's registration in the fund automatically expires on the expiration date.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's records. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each registrant to maintain a current address with the division.

(3) Renewal notices shall specify the amount of the special assessment, the application requirement, and other renewal requirements, if any; shall require that each registrant document or certify that the registrant meets the renewal requirements; and shall advise the registrant of the consequences of failing to renew a registration.

(4) Renewal notices shall specify a renewal application due date no later than the expiration date for the existing registration.

(5) Renewal applications must be received by the division in its ordinary course of business on or before the renewal application due date in order to be processed as a renewal application. Late applications will be processed as reinstatement applications.

(6) A registrant whose registration has expired may have the registration reinstated by complying with the requirements and procedures specified in Subsection 38-11-302(5).

KEY: licensing, contractors, liens
September 16, 1999 38-11-101
Notice of Continuation April 6, 2000 58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-59. Professional Employer Organization Act Rules.
R156-59-101. Short Title.

These rules are known as the "Professional Employer Organization Act Rules".

R156-59-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 59, as used in Title 58, Chapters 1 and 59 or these rules:

(1) "Certified audit", as used in Subsection 58-59-302(6), and "audited financial statement", as used in Subsection 58-59-306(2)(b)(i), means performing inquiry and analytical procedures which provide a basis for expressing assurance that there are no material modifications that should be made to the statements in order for them to be in conformity with the generally accepted accounting principles; and the issuance of a report on the financial statements stating that an audit was performed in accordance with the standards established by the American Institute of Certified Public Accountants.

(2) "Self-funded or partially self-funded insurance plan" as used in Subsection 58-59-302(7) means any plan of insurance or provision of an employee health benefits program where risk of loss is borne by the professional employer organization.

(3) "Certified public accountant" as used in Section 58-59-306 means a Utah licensed certified public accountant unless exempted under Subsection 58-26-9(1) of the Certified Public Accountant Licensing Act.

R156-59-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 59.

R156-59-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-59-302a. Qualifications for Licensure.

(1) In accordance with Subsection 58-59-302(5), the Division will permit an independent certified public accountant to certify in a form prescribed by the Division that the applicant has complied with the requirements set forth in Subsections 58-59-302(3) and (4).

(2) In accordance with Subsection 58-59-302(5), the Division shall require an independent certified public accountant to provide the following evidence of financial responsibility:

(a) a certification in a form prescribed by the Division that the PEO has paid all federal, state, and local withholding taxes, unemployment taxes, FICA taxes, workers' compensation premiums, and employee benefit plan premiums; and

(b) the PEO's audited financial statement for the year immediately preceding the date of the license application.

(3) In accordance with Subsection 58-59-302(7), the Division shall require:

(a) a licensed third party administrator to certify that the applicant is in compliance with the requirements set forth in Subsection 58-59-302(7)(b) and (d); and

(b) a qualified actuary who is a member in good standing of the American Academy of Actuaries to submit a statement of actuarial opinion certifying that the applicant is in compliance with the requirements set forth in Subsection 58-59-302(7)(a).

(4) In accordance with Subsection 58-59-302(9), officers, directors, responsible managers who have signatory authority over fiduciary funds or persons who have a controlling interest in the PEO shall document the following education and experience requirements:

(a) an earned bachelors or post graduate degree in law, accounting, finance or business administration or other related educational program approved by the Division in consultation with the Board and has a minimum of two years of full time paid experience in law, accounting, finance, business administration, management, or other related education and experience approved by the Division in consultation with the Board; or

(b) graduation from high school or have a GED equivalent and have six years of full time paid experience in accounting, finance, business administration, management, or other related experience approved by the Division in consultation with the Board.

(5) In accordance with Subsection 58-59-302(10), good moral character shall be established by evaluating the conduct of the officers, directors, responsible managers who have signatory authority over fiduciary funds or persons who have a controlling interest in the PEO.

(6) In accordance with Subsections 58-59-501(5) and 58-59-502(3), each applicant for licensure as a PEO shall submit a form of the contract to be used between the PEO and the employee and submit a form of the contract to be used between the PEO and the client company to whom leased employees are provided.

(a) The contract forms shall contain:

(i) the name and address of the PEO as filed with the Division of Corporations and Commercial Code and the name and address under which the company does business;

(ii) disclosure that the employee is under contract for the purpose of being leased to a client company;

(iii) disclosure of the identity of the entity from whom the employee will receive compensation for work performed;

(iv) disclosure of the total compensation, including all employee benefits, to which the employee will be entitled;

(v) representation by the PEO that it will pay or cause to be paid when due all amounts to which the employee is entitled or which are to be paid to others, including government agencies and insurance companies; and

(vi) disclosure of any other matter which is material in the employment of the employee by the PEO or in the leasing of the employee to a client company.

(b) The contract forms specified in Subsection (a) shall be accompanied by a letter from legal counsel for the PEO expressing a legal opinion that the contract forms comply with the contract standards set forth in Title 58, Chapter 59, and this section.

R156-59-302b. Change in Ownership or Change in Officers, Directors, Responsible Managers or Other Persons Who Have Controlling Interest - Reestablishment of Qualifications for Licensure.

(1) In accordance with Subsections 58-59-302(8) and 58-

59-502(4), any change in ownership or change in officers, directors, responsible managers who have signatory authority over fiduciary funds or other persons who have a controlling interest in a licensed PEO shall require submission of a criminal background check satisfactory to the Division within 10 days after the change.

(2) In accordance with Subsections 58-59-302(9) and 58-59-502(4), any change in ownership or change in officers, directors, responsible managers who have signatory authority over fiduciary funds or other persons who have a controlling interest in a licensed PEO shall require submission of evidence in a form prescribed by the Division that the new officer, director, responsible manager or other persons having a controlling interest in the PEO has the education and experience requirements set forth in Subsection R156-59-302a(4) within 10 days after the change.

(3) In accordance with Subsections 58-59-302(10) and 58-59-502(4), any change in ownership or change in officers, directors, responsible managers who have signatory authority over fiduciary funds or other persons who have a controlling interest in a licensed PEO shall require submission of evidence in a form prescribed by the Division that the new owner, officer, director, responsible manager or other persons having a controlling interest in the PEO is of good moral character as defined in Subsection R156-59-302a(5) within 10 days after the change.

R156-59-303. Renewal Requirements.

In addition to the renewal requirements set forth in Section 58-59-303, and in accordance with Subsection 58-1-308(3), the renewal requirements for licensure include maintaining the qualifications for licensure set forth in Subsections 58-59-302(3), (4), (5), (6), (7), (8) and (10).

R156-59-306. Financial Responsibility.

(1) In accordance with Subsection 58-59-306(2)(a), the quarterly reports prepared by an independent CPA shall be submitted in accordance with the following schedule:

(a) March 31 for the quarter ending December 31;

(b) June 30 for the quarter ending March 31;

(c) September 30 for the quarter ending June 30; and

(d) December 31 for the quarter ending September 30.

(2) In accordance with Subsection 58-59-306(2)(b)(ii), the annual audited financial statement prepared by an independent certified public accountant shall provide evidence that the PEO has a minimum adjusted net worth of $50,000 or 5% of total adjusted liabilities, whichever is greater.

(3) In accordance with Subsection 58-59-306(2)(b)(ii), if the PEO is self-funded or partially self-funded:

(a) a third party administrator shall certify annually that the PEO is in compliance with Subsection 58-59-302(7)(b) and (d); and

(b) a qualified actuary who is a member in good standing of the American Academy of Actuaries shall submit annually a statement of actuarial opinion certifying that the PEO is in compliance with the requirements set forth in Subsection 58-59-302(7)(a).

R156-59-502. Process for Obtaining Prior Written Approval for Sales, Transfers or Entering Into Contracts which Commits the Licensee to Make Future Payments.

In accordance with Subsection 58-59-502(8), in order to obtain prior written approval from the Division for sales, transfers or entering into contracts which commits the licensee to make future payments, the PEO shall submit:

(1) an application for licensure, if the event or events listed in Subsection 58-59-502(8) results in or would require the creation of a new business entity; or

(2) an audited financial statement prepared by an independent certified public accountant stating that upon completion of the event or events listed in Subsection 58-59-502(8):

(a) the PEO will remain financially responsible as set forth in Subsection 58-59-306(2)(b)(i); and

(b) the PEO will have a minimum adjusted net worth of $50,000 or 5% of the total adjusted liabilities, whichever is greater.

KEY: licensing, professional employer organization*

April 17, 2000 **58-1-106(1)**

Notice of Continuation January 27, 1998 **58-1-202(1)**

58-59-101

R156. Commerce, Occupational and Professional Licensing.
R156-60c. Professional Counselor Licensing Act Rules.
R156-60c-101. Title.

These rules are known as the "Professional Counselor Licensing Act Rules".

R156-60c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

(1) "Internship" means:

(a) 600 clock hours of supervised counseling experience of which 200 hours must be in the provision of mental health therapy; or

(b) five years of supervised experience engaged in the practice of mental health therapy.

(2) "Practicum" means a supervised counseling experience in an appropriate setting of at least three semester or five quarter hours duration for academic credit.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60 is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60c-502.

R156-60c-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 60, Part 4.

R156-60c-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-60c-302a. Qualifications for Licensure - Education Requirements.

(1) The recognized accredited institution of higher education in Subsection 58-60-405(4) is one which is accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education.

(2) The core curriculum in Subsection 58-60-405(4)(a) shall consist of the following courses:

(a) a minimum of two semester or three quarter hours shall be in ethical standards, issues, behavior and decision-making;

(b) a minimum of two semester or three quarter hours shall be in professional roles and functions, trends and history, professional preparation standards and credentialing;

(c) a minimum of two semester or three quarter hours shall be in individual theory;

(d) a minimum of two semester or three quarter hours shall be in group theory;

(e) a minimum of six semester or nine quarter hours shall be in human growth and development. Examples are:

(i) physical, social and psychosocial development;

(ii) personality development;

(iii) learning theory and cognitive development;

(iv) emotional development;

(v) life-span development;

(vi) enhancing wellness;

(vii) human sexuality; and

(viii) career development;

(f) a minimum of three semester or five quarter hours shall be in cultural foundations. Examples are:

(i) human diversity;

(ii) multicultural issues and trends;

(iii) gender issues;

(iv) exceptionality;

(v) disabilities;

(vi) aging; and

(vii) discrimination;

(g) a minimum of six semester or nine quarter hours shall be in the application of individual and group therapy and other therapeutic methods and interventions. Examples are:

(i) building, maintaining and terminating relationships;

(ii) solution-focused and brief therapy;

(iii) crisis intervention;

(iv) prevention of mental illness;

(v) treatment of specific syndromes;

(vi) case conceptualization;

(vii) referral, supportive and follow-up services; and

(viii) lab not to exceed four semester or six quarter hours;

(h) a minimum of two semester or three quarter hours shall be in psychopathology and DSM classification;

(i) a minimum of two semester or three quarter hours shall be in dysfunctional behaviors. Examples are:

(i) addictions;

(ii) substance abuse;

(iii) cognitive dysfunction;

(iv) sexual dysfunction; and

(v) abuse and violence;

(j) a minimum of two semester or three quarter hours shall be in a foundation course in test and measurement theory;

(k) a minimum of two semester or three quarter hours shall be in an advanced course in assessment of mental status;

(l) a minimum of three semester or five quarter hours shall be in research and evaluation. This shall not include a thesis, dissertation, or project, but may include:

(i) statistics;

(ii) research methods, qualitative and quantitative;

(iii) use and interpretation of research data;

(iv) evaluation of client change; and

(v) program evaluation;

(m) a minimum of three semester or five quarter hours of practicum as defined in Subsection R156-60c-102(2);

(n) a minimum of six semester or nine quarter hours of internship as defined in Subsection R156-60c-102(1); and

(o) a minimum of 16 semester or 23 quarter hours of course work in the behavioral sciences. No more than six semester or nine quarter hours of credit for thesis, dissertation or project hours shall be counted toward the required core curriculum hours in this subsection. These hours are required beginning January 1, 1997.

(3) The supplemental course work shall consist of formal graduate level work meeting the requirements of Subsections (1) and (2) in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the board.

(4) Professional counseling course work required in the core curriculum pursuant to Subsection 58-60-405(4)(a) may be completed after the applicant received their degree; however,

pursuant to Subsection 58-60-405(5), the experience required must be obtained after the complete education requirement has been met.

R156-60c-302b. Qualifications for Licensure - Experience Requirements.

(1) The professional counselor and mental health therapy training qualifying an applicant for licensure as a professional counselor under Subsections 58-60-405(5) and (6) shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy under the supervision of a qualified professional counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist; and

(c) be completed under a program of supervision by a mental health therapist meeting the requirements under Sections R156-60c-401 and R156-60c-402.

(4) An applicant for licensure as a professional counselor, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the professional counselor and mental health therapy training requirements under Subsection (3) outside the state may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-405(5) and (6), and Subsections R156-60c-302b(3). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to and in all respects meets the requirements under this Subsection.

R156-60c-302c. Qualifications for Licensure - Examination Requirements.

(1) An applicant for licensure as a professional counselor under Subsection 58-60-405(7) must pass the following examinations:

(a) the Utah Professional Counselor Law, Rules and Ethics Examination;

(b) the National Counseling Examination of the National Board for Certified Counselors; and

(c) the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors.

R156-60c-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-60c-304. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 4, as a professional counselor.

(2) During each two year period commencing September 30th of each even numbered year, a professional counselor shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified professional education under this Section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a mental health therapist professional counselor;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 10 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing professional education courses in the field of mental health therapy professional counseling, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification; and

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist professional counselor.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this Section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this Section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-60c-306. License Reinstatement - Requirements.

In addition to the requirements established in Section R156-1-308e, an applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) if deemed necessary, meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a professional counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of professional counselor and mental health therapy training as a professional counselor-temporary;

(3) pass the Utah Professional Counselor Law, Rules and Ethics Examination;

(4) pass the National Counseling Examination of the National Board for Certified Counselors if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor;

(5) pass the National Clinical Mental Health Counseling Examination if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a professional counselor; and

(6) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a professional counselor.

R156-60c-401. Requirements to be Qualified as a Professional Counselor Training Supervisor and Mental Health Therapist Training Supervisor.

In accordance with Subsections 58-60-405(5) and (6), in order for an individual to be qualified as a professional counselor training supervisor or mental health therapist trainer, the individual shall have the following qualifications:

(1) be currently licensed in good standing in a profession set forth for a supervisor under Subsection 58-60-405(5) in the state in which the supervised training is being performed; and

(2) have engaged in lawful practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years prior to beginning supervision activities.

R156-60c-402. Duties and Responsibilities of a Supervisor of Professional Counselor and Mental Health Therapy Training.

The duties and responsibilities of a licensee providing supervision to an individual completing supervised professional counselor and mental health therapy training requirements for licensure as a professional counselor are to:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of professional counseling and report violations to the division;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised professional counselor and mental health therapy training, including the supervisor's evaluation of the supervisee's competence in the practice of professional counseling and mental health therapy;

(9) supervise not more than three supervisees at any given time unless approved by the board and division; and

(10) assure each supervisee has met the educational requirement as outlined in Subsection 58-60-405(4) and R156-60c-302a prior to beginning the supervised training of the supervisee as required under Subsection 58-60-405(5).

R156-60c-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60c-401 and R156-60c-402;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60c-302b(3) and R156-60c-402(7);

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially

vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the professional counselor and that individual;

(11) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failure to cooperate with the Division during an investigation; and

(19) failure to abide by the provision of the American Counseling Association's Ethical Standards, March 1988, which is adopted and incorporated by reference.

KEY: licensing, counselors, mental health, professional counselors*

October 7, 1999 **58-60-401**

Notice of Continuation April 6, 2000 **58-1-106(1)**

58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-61. Psychologist Licensing Act Rules.
R156-61-101. Title.

These rules are known as the "Psychologist Licensing Act Rules."

R156-61-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 61, as used in Title 58, Chapters 1 and 61 or these rules:

(1) "Approved diagnostic and statistical manual for mental disorders" means the "Diagnostic and Statistical Manual of Mental Disorders", 4th edition, published by the American Psychiatric Association, or the ICD-10-CM published by Medicode or the American Psychiatric Association.

(2) "Qualified faculty", as used in Subsection 58-1-307(b), means that university faculty member providing pre-doctoral supervision of clinical or counseling experience, that is experience in a university setting which is acquired prior to the pre-doctoral internship, who is licensed in Utah as a psychologist and who is training students in the context of a doctoral program leading to license eligibility. Qualified faculty does not include adjunct faculty. The qualified faculty supervisor must be legally able to personally provide the services which he is supervising. The qualified faculty supervisor must meet all other requirements for supervision as described in Section R156-61-302e. This provision does not allow such qualified faculty supervisors to provide supervision of hours needed for license eligibility, such as internship and post doctoral experience, unless the supervisor is otherwise qualified according to Section R156-61-302d. Supervisors in settings other than a university setting as described in this subsection must meet all requirements for supervisors as described in Sections R156-61-302d and R156-61-302e.

R156-61-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 61.

R156-61-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-61-201. Advisory Peer Committee Created - Membership - Duties.

(1) There is hereby enabled in accordance with Subsection 58-1-203(6), the Ethics Committee as an advisory peer committee to the Psychology Licensing Board on either a permanent or ad hoc basis consisting of members licensed in good standing as psychologists qualified to engage in the practice of mental health therapy, in number and area of expertise necessary to fulfill the duties and responsibilities of the committee as set forth in Subsection (3).

(2) The committee shall be appointed and serve in accordance with Section R156-1-204.

(3) The duties and responsibilities of the committee shall include assisting the division in its duties, functions, and responsibilities defined in Section 58-1-203 as follows:

(a) upon the request of the division, review reported violations of Utah law or the standards and ethics of the profession by a person licensed as a psychologist and advise the division if allegations against or information known about the person presents a reasonable basis to initiate or continue an investigation with respect to the person;

(b) upon the request of the division provide expert advice to the division with respect to conduct of an investigation; and

(c) when appropriate serve as an expert witness in matters before the division.

R156-61-302a. Qualifications for Licensure - Education Requirements.

(1) An institution or program of higher education, or a degree qualifying an applicant for licensure as a psychologist, to be recognized by the division in collaboration with the board under Subsection 58-61-304(1)(d), shall be accredited by the Committee on Accreditation of the American Psychological Association or meet the following criteria:

(a) if located in the United States or Canada, be accredited by a professional accrediting body approved by the Council for Higher Education of the American Council on Education, at the time the applicant received the required earned degree; or

(b) if located outside of the United States or Canada, be equivalent to an accredited program under Subsection (a), and the burden to demonstrate equivalency shall be upon the applicant; and

(c) result from successful completion of a program conducted on or based on a formal campus;

(d) result from a program which includes at least one year of residence at the educational institution;

(e) if located in the United States or Canada, be an institution having a doctoral psychology program meeting "Designation" criteria, as recognized by the Association of State and Provincial Psychology Boards/National Register Joint Designation Committee, at the time the applicant received the earned degree, or if located outside of the United States or Canada, meet the same criteria by which a program is recognized by the Association of State and Provincial Psychology Boards at the time the applicant received the earned degree;

(f) have an organized sequence of study to provide an integrated educational experience appropriate to preparation for the professional practice of psychology, and shall clearly identify those persons responsible for the program with clear authority and responsibility for the core and specialty areas regardless of whether or not the program cuts across administrative lines in the educational institution;

(g) clearly identify in catalogues or other publications the psychology faculty, demonstrate that the faculty is sufficient in number and experience to fulfill its responsibility to adequately educate and train professional psychologists, and demonstrate that the program is under the direction of a professionally trained psychologist;

(h) grant earned degrees resulting from a program encompassing a minimum of three academic years of full time graduate study with an identifiable body of students who are matriculated in the program for the purpose of obtaining a doctoral degree;

(i) include supervised practicum, internship, and field or

laboratory training appropriate to the practice of psychology;

(j) require successful completion of a minimum of two semester/three quarter hour graduate level core courses including:

(i) scientific and professional ethics and standards;

(ii) research design and methodology;

(iii) statistics; and

(iv) psychometrics including test construction and measurement;

(k) require successful completion of a minimum of two graduate level semester hours/three graduate level quarter hours in each of the following knowledge areas. Course work must have a theoretical focus as opposed to an applied, clinical focus:

(i) biological bases of behavior such as physiological psychology, comparative psychology, neuropsychology, psychopharmacology, perception and sensation;

(ii) cognitive-affective bases of behavior such as learning, thinking, cognition, motivation and emotion;

(iii) social and cultural bases of behavior such as social psychology, organizational psychology, general systems theory, and group dynamics; and

(iv) individual differences such as human development, personality theory and abnormal psychology.

(l) require successful completion of specialty course work and professional education courses necessary to prepare the applicant adequately for the practice of psychology.

(2) An applicant who has received a doctoral degree in psychology by completing the requirements of Subsections (1)(a) through (i), without completing the core courses required under Subsection (j), or the specialty course work required in Subsection (l) may be allowed to complete the required course work post-doctorally. The supplemental course work shall consist of formal graduate level work meeting the requirements of Subsections (j) and (l) in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the board.

(3) The date of completion of the doctoral degree shall be the graduation date or the date on which all formal requirements for graduation were met as certified by the university registrar.

R156-61-302b. Qualifications for Licensure - Experience Requirements.

(1) Psychology training of a minimum of 4,000 hours qualifying an applicant for licensure as a psychologist under Subsection 58-61-304(1)(e), and mental health therapy training under Subsection 58-61-304(1)(f), to be approved by the division in collaboration with the board, shall:

(a) be completed in not less than two years and in not more than four years unless otherwise approved by the board and division; and

(b) be completed while the applicant is under the supervision of a qualified psychologist meeting the requirements under Section R156-61-302d.

(2) An applicant for licensure as a psychologist who has commenced and completed all or part of the psychology or mental health therapy training requirements under Subsection (1) outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to the requirements for training under Subsections 58-61-304(1)(e) and (f), and Subsection R156-61-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training completed outside the state is equivalent to the requirements under this Subsection.

R156-61-302c. Qualifications for Licensure - Examination Requirements.

(1) The examination requirements which must be met by an applicant for licensure as a psychologist under Subsection 58-61-304(1)(g) are:

(a) passing the Examination for the Professional Practice of Psychology (EPPP) developed by the American Association of State Psychology Board (ASPPB) with a passing score as recommended by the ASPPB; and

(b) passing the Utah Psychology Law Examination with a score of not less than 75%.

(2) A person may be admitted to the EPPP examination in Utah only after meeting the requirements under 58-61-305, and after receiving written approval from the division.

(3) If an applicant is admitted to an EPPP examination based upon substantive information that is incorrect and furnished knowingly by the applicant, the applicant shall automatically be given a failing score and shall not be permitted to retake the examination until the applicant submits fees and a correct application demonstrating the applicant is qualified for the examination. If an applicant is inappropriately admitted to an EPPP examination because of a division or board error and the applicant receives a passing score, the results of the examination may not be used for licensure until the deficiency which would have barred the applicant for admission to the examination is corrected.

(4) An applicant who fails the EPPP examination three times will not be allowed subsequent admission to the examination until the applicant has appeared before the board, developed with the board a plan of study in appropriate subject matter, and thereafter completed the planned course of study to the satisfaction of the board.

(5) An applicant who is found to be cheating on the EPPP examination or in any way invalidating the integrity of the examination shall automatically be given a failing score and shall not be permitted to retake the examination for a period of at least three years as is determined by the division in collaboration with the board.

(6) The Utah Psychology Law Examination may be taken only after an applicant has taken the EPPP examination.

R156-61-302d. Qualifications for Designation as an Approved Psychology Training Supervisor.

To be approved by the division in collaboration with the board as a supervisor of psychology or mental health therapy training required under Subsections 58-61-304(1)(e) and (f), an individual shall:

(1) be currently licensed in good standing as a psychologist in the jurisdiction in which the supervised training is being performed; and

(2) demonstrate practice as a licensed psychologist for not less that 4,000 hours in a period of not less than two years.

R156-61-302e. Duties and Responsibilities of a Supervisor of Psychology Training and Mental Health Therapist Training.

The duties and responsibilities of a psychologist supervisor are further defined, clarified or established as follows:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) supervise not more than 120 hours of supervised experience per week;

(4) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

(5) comply with the confidentiality requirements of Section 58-61-602;

(6) provide timely and periodic review of the client records assigned to the supervisee;

(7) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of psychology; and

(8) submit appropriate documentation to the division with respect to work completed by the supervisee evidencing the performance of the supervisee during the period of supervised psychology training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of psychology and mental health therapy.

R156-61-302f. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 61, is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-61-302g. License Reinstatement - Requirements.

An applicant for reinstatement of his license after two years following expiration of that license shall be required to:

(1) upon request meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a psychologist and to make a determination of education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4000 hours of psychology and/or mental health therapy training;

(3) pass the Utah Psychology Law Examination;

(4) pass the EPPP Examination if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a psychologist; and

(5) complete a minimum of 48 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a psychologist.

R156-61-302h. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 61.

(2) During each two year period commencing on October 1 of each even numbered year, a licensee shall be required to complete not less than 48 hours of qualified professional education directly related to the licensee's professional practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two year period year shall be decreased in a pro-rata amount equal to any part of that two year period year preceding the date on which that individual first became licensed.

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a psychologist;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of ten hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing education professional education courses in the field of psychology, or supervision of an individual completing his experience requirement for licensure as a psychologist;

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a psychologist;

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) A licensee who documents they are engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years.

However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-61-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violation of any provision of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association (APA) as adopted by the APA, December 1992 edition, which is adopted and incorporated by reference;

(2) violation of any provision of the "ASPPB Code of Conduct" of the Association of State and Provincial Psychology Boards (ASPPB) as adopted by the ASPPB, 1991 edition, which is adopted and incorporated by reference;

(3) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-61-302d and R156-61-302e;

(4) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(5) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(6) failing to establish and maintain appropriate professional boundaries with a client or former client;

(7) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(8) engaging in sexual activities or sexual contact with a client with or without client consent;

(9) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(10) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and the client;

(11) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and that individual;

(12) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(13) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(14) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(15) exploiting a client for personal gain;

(16) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(17) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(18) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records; and

(19) failure to cooperate with the Division during an investigation.

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	58-61-101

R156. Commerce, Occupational and Professional Licensing.
R156-63. Security Personnel Licensing Act Rules.
R156-63-101. Title.

These rules are known as the "Security Personnel Licensing Act Rules."

R156-63-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or these rules:

(1) "Approved basic education and training programs" as used in these rules means basic education and training that meets the standards set forth in Sections R156-63-602, R156-63-603 and R156-63-604 and that is approved by the division.

(2) "Contract security company" includes:

(a) a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom he is employed, or for other than the regular salary, whether at regular pay or overtime pay, from the law enforcement agency by whom he is employed; but does not include:

(b) a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible personal property, real property, or the life and well being of personnel employed by, or animals owned by or under the responsibility of the that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(3) "Employee" means an individual providing services in the security guard industry for compensation when the amount of compensation is based directly upon the security guard services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(4) "Immediate supervision" means the supervisor is available for immediate voice communication and can be available for in-person consultation within a reasonable period of time with an on-the-job trainee.

(5) "Officer" as used in Subsections 58-63-201(1)(a) and R156-63-302a(1)(b) means a manager, director, or administrator of a contract security company.

(6) "Qualified continuing education" as used in these rules means continuing education that meets the standards set forth in Subsection R156-63-304.

(7) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of a contract security company who exercises material authority in the conduct of the contract security company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter.

(8) "Supervised on-the-job training" means training of an armed or unarmed private security officer or alarm response runner, under the immediate supervision of a licensed private security officer who has been assigned to train and develop the on-the-job trainee.

(9) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-63-502.

R156-63-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 63.

R156-63-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-63-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as a contract security company shall be accompanied by:

(a) a certification of criminal record history for the applicant's qualifying agent issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant's qualifying agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel;

(c) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; and

(d) a copy of the driver license or Utah identification card issued to the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel.

(2) An application for licensure as an armed private security officer or alarm response runner shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant;

(c) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(d) a copy of the driver license or Utah identification card issued to the applicant.

(3) An application for licensure as an unarmed private security officer or alarm response runner shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant;

(c) a fee established in accordance with Section 63-38-3.2

equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(d) a copy of the driver license or Utah identification card issued to the applicant.

(4) An applicant for licensure as an armed private security officer, unarmed private security officer, alarm response runner, or as a qualifying agent for a contract security company by a person currently licensed under Title 58, Chapter 63, shall submit an application for change in license classification and shall be required to only document compliance with those requirements for licensure which have not been previously met in obtaining the currently held license.

R156-63-302b. Qualifications for Licensure - Basic Education and Training Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the basic education and training requirements for licensure in Section 58-63-302 are defined, clarified, or established as follows:

(1) each applicant for licensure as an armed private security officer shall successfully complete a basic education and training program approved by the division, the content of which is set forth in Section R156-63-603; and

(2) each applicant for licensure as an unarmed private security officer shall successfully complete a basic education and training program approved by the division, the content of which is set forth in Section R156-63-604.

R156-63-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established as follows:

(1) the qualifying agent for each applicant who is a contract security company shall pass the Utah Security Personnel Law and Rules Examination; and

(2) each applicant for licensure as an armed private security officer or an unarmed private security officer shall obtain a score of at least 75% on the basic education and training final examination approved by the division and offered by each provider of basic education and training as a part of the program.

R156-63-302d. Qualification for Licensure - Liability Insurance for a Contract Security Company.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the insurance requirements for licensure as a contract security company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established as follows.

(1) An applicant shall file with the division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;

(b) assault and battery;

(c) personal injury;

(d) false arrest;

(e) libel and slander;

(f) invasion of privacy;

(g) broad form property damage;

(h) damage to property in the care, custody or control of the contract security company; and

(i) errors and omissions.

(2) Said insurance shall provide liability limits in amounts not less than $300,000 for each incident and not less than $1,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All contract security companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the division during normal working hours.

R156-63-302e. Qualifications for Licensure - Age Requirement for Armed Private Security Officer.

An armed private security officer must be 18 years of age or older at the time of submitting an application for licensure in accordance with Subsection 76-10-509(1).

R156-63-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 63 is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-63-304. Continuing Education for Armed and Unarmed Private Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer and unarmed private security officer.

(2) Qualified continuing education for armed private security officers and unarmed private security officers shall consist of not less than eight hours of formal classroom education or practical experience in each calendar year.

(3) Continuing firearms education and training for armed private security officers shall consist of not less than eight hours during each calendar year. Firearms education and training shall comply with the provisions of Public Law 103-54, the Armored Car Industry Reciprocity Act of 1993.

(4) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(5) Continuing education to qualify under the provisions of Subsection (2) shall include:

(a) company operational procedures manual;

(b) applicable state laws and rules;

(c) legal powers and limitations of private security officers;
(d) observation and reporting techniques;
(e) ethics; and
(f) emergency techniques.

R156-63-305. Demonstration of Clear Criminal History for Licensees as Renewal Requirement.

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created a demonstration of a clear criminal history as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer, unarmed private security officer, alarm response runner, and for the qualifying agent for a contract security company.

(2) Each application for renewal or reinstatement of the license of a contract security company shall be conditioned upon the licensee having obtained within 120 days prior to submission of the application for renewal or reinstatement, a clear criminal history certification from the Bureau of Criminal Identification, Utah Department of Public Safety, for the licensee's qualifying agent.

(3) Each application for renewal or reinstatement of the license of an armed private security officer, unarmed private security officer, or alarm response runner shall be conditioned upon the licensee having obtained within 120 days prior to submission of the application for renewal or reinstatement, a clear criminal history certification from the Bureau of Criminal Identification, Utah Department of Public Safety.

R156-63-306. Change of Qualifying Agent.

Within 30 days after a qualifying agent for a licensed contract security company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the contract security company shall file with the division an application for change of qualifier on forms provided by the division, accompanied by a fee established in accordance with Section 63-38-3.2.

R156-63-307. Exemptions from Licensure.

In accordance with Subsection 58-1-307(1)(c), an applicant who has applied for licensure as an unarmed or armed private security officer or alarm response runner is exempt from licensure and may engage in practice as an unarmed or armed private security officer or alarm response runner in a supervised on-the-job training capacity, for a period of time not to exceed the earlier of 30 days or action by the division upon the application.

R156-63-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) employment of an unarmed or armed private security office or alarm response runner by a contract security company, as an on-the-job trainee pursuant to Section R156-63-307, who has been convicted of a felony or a misdemeanor crime of moral turpitude;

(3) employment of an unarmed or armed private security officer or alarm response runner by a contract security company who fails to meet the requirements of Section R156-63-307; and

(4) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or an individual has entered into participation in a first offender, deferred adjudication or other program or arrangement where judgment of conviction is withheld.

R156-63-601. Operating Standards - Firearms.

(1) An armed private security officer shall carry only that firearm with which he has passed a firearms qualification course as defined in Section R156-63-603.

(2) Shotguns and rifles, owned and issued by the contract security company, may be used in situations where they would constitute an appropriate defense for the armed private security officer and where the officer has completed an appropriate qualification course in their use.

(3) An armed private security officer shall not carry a firearm except when acting on official duty as an employee of a contract security company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63-602. Operating Standards - Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

To be designated by the division as an approved basic education and training program for armed private security officers and unarmed private security officers, the following standards shall be met.

(1) There shall be a written education and training manual which includes performance objectives.

(2) The program for armed private security officers shall provide content as established in Section R156-63-603 of these rules.

(3) The program for unarmed private security officers shall provide content as established in Section R156-63-604 of these rules.

(4) All instructors providing the basic classroom instruction shall have at least three years of training and experience reasonably related to providing of security guard services.

(5) All instructors providing firearms training shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructors certification; or

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the director to be equivalent.

(6) All approved basic education and training programs shall maintain training records on each individual trained including the dates of attendance at training, a copy of the instruction given, and the location of the training. These

records shall be maintained in the files of the education and training program for at least three years.

(7) In the event an approved provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

R156-63-603. Operating Standards - Content of Approved Basic Education and Training Program for Armed Private Security Officers.

An approved basic education and training program for armed private security officers shall have the following components:

(1) at least eight hours of basic classroom instruction to include the following:

(a) the nature and role of private security;
(b) state laws and rules applicable to private security;
(c) legal responsibilities of private security;
(d) civil and criminal considerations;
(e) situational response evaluations;
(f) ethics;
(g) use of deadly force;
(h) observation and description;
(i) report writing;
(j) witness statements;
(k) courtroom testimony;
(l) industrial accidents;
(m) civil and criminal incidents;
(n) crimes in progress;
(o) armed patrol techniques;
(p) unarmed patrol techniques;
(q) fixed post techniques;
(r) sexual harassment in the work place; and
(s) a final examination which competently examines the student in the subjects included in the approved program of education and training.

(2) at least six hours of classroom firearms instruction to include the following:

(a) the weapon and its ammunition;
(b) the use of factory loaded ammunition only;
(c) the care and cleaning of the weapon;
(d) cleaning equipment options;
(e) barrel and cylinder maintenance;
(f) no alterations of firing mechanism;
(g) weapons inspection review procedures;
(h) firearm safety on duty;
(i) firearm safety at home;
(j) firearm safety on range;
(k) ethical restraints on weapon use;
(l) legal restraints on weapon use;
(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4 and;
(n) the instruction that armed private security officers shall not fire their weapon unless there is an eminent threat to life and at no time will the weapon be drawn as a threat or means to force compliance with any verbal directive; and

(3) at least six hours of firearms instruction on the range to include the following:

(a) demonstration of appropriate techniques of shooting;
(b) explanation of the difference between flash sight and sight picture; and
(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80%.

R156-63-604. Operating Standards - Content of Approved Basic Education and Training Program for Unarmed Private Security Officers.

An approved basic education and training program for unarmed private security officers shall have the following components:

(1) at least eight hours of basic classroom instruction to include the following:

(a) the nature and role of private security;
(b) state laws and rules applicable to private security;
(c) legal responsibilities of private security;
(d) civil and criminal considerations;
(e) situational response evaluations;
(f) ethics;
(g) use of deadly force;
(h) observation and description;
(i) report writing;
(j) witness statements;
(k) courtroom testimony;
(l) industrial accidents;
(m) civil and criminal incidents;
(n) crimes in progress;
(o) unarmed patrol techniques;
(p) fixed post techniques;
(q) sexual harassment in the work place;
(r) a final examination which competently examines the student in the subjects included in the approved program of education and training.

R156-63-605. Operating Standards - Uniforms.

(1) All unarmed and armed private security officers while on duty shall wear the uniform of their contract security company employer unless assigned to work undercover.

(2) Uniforms worn by armed or unarmed private security officers shall be easily distinguished from the uniform of any public law enforcement agency.

R156-63-606. Operating Standards - Badges.

Badges may be worn under the following conditions:

(1) they do not carry the seal of the state of Utah nor have the words "State of Utah";

(2) they shall contain the word "Security" and may contain the name of the company; and

(3) the use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63-607. Operating Standards - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Private Security Officer or Manager of Contract Security Companies.

In the event an officer, qualifying agent, director, partner,

proprietor, private security officer, or any management personnel having direct responsibility for managing operations of the contract security company is found guilty of a felony, or of a misdemeanor which impacts upon that individual's ability to function within the security industry, said company shall within ten days reorganize and exclude said individual from participating at any level or capacity in the management, operations, sales, ownership, or employment of that company.

R156-63-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No contract security company shall use any name which implies intentionally or otherwise that they are connected or associated with any public law enforcement agency.

(2) No contract security company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63-609. Operating Standards - Proper Identification of Private Security Officers.

All armed and unarmed private security officers shall carry a valid security license together with a Utah identification card issued by the Division of Driver License or a current Utah driver license whenever he is performing the duties of an armed or unarmed private security officer and shall exhibit said license and identification upon request.

R156-63-610. Operating Standards - Vehicles.

No contract security company or its personnel shall utilize a vehicle bearing a red or blue emergency light or containing a siren, bell, or other non-standard signaling device.

R156-63-611. Operating Standards - Operational Procedures Manual.

(1) Each contract security company shall develop and maintain an operational procedures manual which includes the following topics:

(a) detaining or arresting;
(b) restraining, detaining, and search and seizure;
(c) felony and misdemeanor definitions;
(d) observing and reporting;
(e) ingress and egress control;
(f) natural disaster preparation;
(g) alarm systems, locks, and keys;
(h) radio and telephone communications;
(i) crowd control;
(j) public relations;
(k) personal appearance and demeanor;
(l) bomb threats;
(m) fire prevention;
(n) mental illness;
(o) supervision;
(p) criminal justice system;
(q) code of ethics for private security officers; and
(r) sexual harassment in the workplace.

(2) The operations and procedures manual shall be immediately available to the division upon request.

R156-63-612. Operating Standards - Display of License.

The license issued to a contract security company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

KEY: licensing, security guards
April 1, 1999 **58-1-106(1)**
58-1-202(1)
58-63-101

R156. Commerce, Occupational and Professional Licensing.
R156-65. Burglar Alarm Security and Licensing Act Rules.
R156-65-101. Title.

These rules are known as the "Burglar Alarm Security and Licensing Act Rules".

R156-65-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 65, as used in Title 58, Chapters 1 and 65, or these rules:

(1) "Individual employed" means an individual who has an agreement with an alarm business or company to perform alarm systems business activities under the direct supervision or control of the alarm business or company and for whose alarm system business activities the alarm company is legally liable and who has or could have access to knowledge of specific applications.

(2) "Knowledge of specific applications" means obtaining specific information about any premises which is protected or is to be protected by an alarm system. This knowledge is gained through access to records, on-site visits or otherwise gathered through working for an alarm business or company.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 65, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-65-502.

R156-65-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 65.

R156-65-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-65-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as an alarm company shall include:

(a) a record of criminal history or certification of no record of criminal history with respect to the applicant's qualifying agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing:

(i) the fingerprints of the applicant's qualifying agent;

(ii) the fingerprints of each of the applicant's officer's, directors, shareholders owning more than 5% of the stock of the company, partners, and proprietors; and

(iii) the fingerprints of each of the applicant's management personnel who will have responsibility for any of the company's operations as an alarm company within the state;

(c) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each individual for whom fingerprints are required under Subsection (1)(b); and

(d) a copy of the driver license or Utah Identification card for each individual for whom fingerprints are required under Subsection (1)(b).

(2) An application for license as an alarm company agent shall include:

(a) a record of criminal history or certification of no record of criminal history with respect to the applicant, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing the fingerprints of the applicant;

(c) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, regarding the applicant; and

(d) a copy of the driver license or Utah Identification card for the applicant.

R156-65-302c. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the experience requirements for an alarm company applicant's qualifying agent in Subsection 58-65-302(1)(c)(i), are defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall:

(1) have not less than 6,000 hours of experience in the alarm company business of which not less than 2,000 hours shall have been in a management, supervisory, or administrative position; or

(2) have not less than 6,000 hours of experience in the alarm company business combined with not less than 2,000 hours of management, supervisory, or administrative experience in a lawfully and competently operated construction company.

R156-65-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for an alarm company applicant's qualifying agent in Subsection 58-65-(1)(c)(ii), are defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall:

(1) pass the Utah Burglar Alarm Security Law and Rules Examination with a score of not less than 75%; and

(2) pass the Burglar Alarm Qualifier Examination with a score of not less than 75%.

R156-65-302e. Qualifications for Licensure - Insurance Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the insurance requirements for licensure as an alarm company in Section 58-65-302(1)(k)(i) are defined, clarified, or established as follows:

(1) an applicant for an alarm company license shall file with the division a "certificate of insurance" issued by an insurance company or agent licensed in the state demonstrating the applicant is covered by comprehensive public liability coverage in an amount of not less than $300,000 for each incident, and not less than $1,000,000 in total;

(2) the terms and conditions of the policy of insurance coverage shall provide that the division shall be notified if the insurance coverage terminates for any reason; and

(3) all licensed alarm companies shall have available on file and shall present to the division upon demand, evidence of insurance coverage meeting the requirements of this Section for all periods of time in which the alarm company is licensed in this state as an alarm company.

R156-65-303. Renewal Cycle - Procedure.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 65, is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-65-304. Renewal Requirement - Demonstration of Clear Criminal History.

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created as a requirement for renewal or reinstatement of any license of an alarm company or alarm company agent a demonstration of clear criminal history for each alarm company qualifying agent and for each alarm company agent.

(2) Each application for renewal or reinstatement of a license of an alarm company shall be accompanied by a record of criminal history or certification of no record of criminal history with respect to the alarm company's qualifying agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety within 120 days prior to submission of the application for renewal or reinstatement to the division.

(3) Each application for renewal or reinstatement of a license of an alarm company agent shall be accompanied by a record of criminal history or certification of no record of criminal history with respect to the alarm company agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety within 120 days prior to submission of the application for renewal or reinstatement to the division.

R156-65-306. Change of Qualifying Agent.

Within 15 days, or some extended period granted in writing by the division, after a qualifying agent for an alarm company ceases employment with the alarm company, or for any other reason is not qualified to act as the alarm company qualifier, the alarm company shall file with the division an application for change of qualifier on forms provided by the division accompanied by a record of criminal history or certification of no record of criminal history, fee, fingerprint cards, and copy of a identification as required under Subsection R156-65-302a(1).

R156-65-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing as an alarm company to notify the division of the cessation of performance of its qualifying agent or failing to replace its qualifying agent, as required under Section R156-65-306;

(2) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section R156-65-601;

(3) employing as an alarm company a qualifying agent or alarm company agent knowing that individual has engaged in conduct inconsistent with the duties and responsibilities of an alarm company agent;

(4) failing to comply with operating standards established by rule; and

(5) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or a settlement or agreement whereby an individual has entered into participation as a first offender, or an action of deferred adjudication, or other program or arrangement where judgment or conviction is withheld.

R156-65-601. Display of License.

An alarm company agent shall carry on his person at all times while acting as an alarm company agent a copy of his license and shall display that license upon the request of any person to whom the agent is representing himself as an alarm company agent, and upon the request of any law enforcement officer or representative of the division.

KEY: licensing, alarm company*, burglar alarms*
November 17, 1998 **58-65-101**
58-1-106(1)
58-1-202(1)

R277. Education, Administration.
R277-462. Comprehensive Guidance Program.
R277-462-1. Definitions.

A. "Comprehensive Guidance Program" means the organization of resources to meet the priority needs of students through four delivery system components:

(1) guidance curriculum which means providing guidance content to all students in a systematic way;

(2) student educational and occupational planning component which means individualized education and career planning with all students;

(3) responsive services component designed to meet the immediate concerns of certain students; and

(4) system support component which addresses management of the program and the needs of the school system itself.

B. "SEOP" means student educational occupational plan.

C. "Direct services" means time spent on the guidance curriculum, SEOP, and responsive services activities meeting students' identified needs as identified by students, school personnel and parents consistent with district policy.

D. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which a school district is eligible.

E. "Board" means the Utah State Board of Education and Applied Technology Education.

F. "USOE" means the Utah State Office of Education.

R277-462-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-15-201 which designates the Utah State Board of Education as the Board for Applied Technology Education, and Section 53A-17a-131.8 which directs the Board to establish qualification criteria and distribute Comprehensive Guidance Program funds.

B. This rule establishes standards and procedures for entities applying for funds appropriated for Comprehensive Guidance Programs administered by the Board.

R277-462-3. Comprehensive Guidance Program Approval and Qualifying Criteria.

A. Comprehensive guidance disbursement criteria:

(1) For each school which meets the qualifying criteria for a Comprehensive Guidance Program and which enrolls students in grades seven through twelve, districts shall receive from six to twenty-four WPU's based on school enrollment as of October 1 of the current fiscal year (e.g., 1 - 399 students = 6 WPU's, 400 - 799 students = 12 WPU's, 800 - 1,199 students = 18 WPU's, 1,200 students + = 24 WPU's).

(2) If at any time following a school's initial approval of its Comprehensive Guidance Program, the school's enrollment drops below the funding level approved for the school, the school may be held harmless for the change in enrollment for a maximum of two years following the decline in enrollment into the lower funding category, funds permitting.

(3) Priority for funding shall be given for grades nine through twelve and any remaining funds will be allocated to grades seven and eight for the schools which meet program standards. Grades nine through twelve shall be given priority for funding provided under Section 53A-17a-131.8. Remaining funds shall be allocated to grades seven and eight in those schools that meet program standards. Funds directed to grades seven and eight shall be distributed according to the formula under R277-462-3A(1) following the distribution of funds for grades nine through twelve.

(4) Comprehensive Guidance Program funds shall be distributed to districts for each school within the district that meets all of the following criteria:

(a) A school-wide student/parent/teacher needs assessment completed within the last four years prior to the application deadline for funding;

(b) Documentation that a school advisory and a school steering committee have been organized and are functioning effectively;

(c) Evidence that eighty percent of aggregate counselors time is devoted to DIRECT services to students;

(d) A program that reflects a commitment that all students in the school shall benefit from the Comprehensive Guidance Program;

(e) Approval of the Program by the local board of education;

(f) The establishment of the SEOP requirements for all students both as process and product consistent with R277-911, Secondary Applied Technology Education and R277-700, The Elementary and Secondary School Core Curriculum and High School Graduation Requirements;

(g) Assistance for students in developing job seeking and finding skills and in post-high school placement;

(h) Inclusion in the guidance curriculum of activities for each of the twelve National Occupational Information Coordination Committee (NOICC) competencies (available from the USOE guidance specialist);

(i) Distribution to and discussion with feeder schools of the Comprehensive Guidance Program; and

(j) Sufficient district budget to adequately provide for guidance facilities, material, equipment and clerical support.

B. All districts may qualify schools for the Comprehensive Guidance Program funds and shall certify in writing that all program standards are being met by each school receiving funds under this rule.

(1) Procedures for qualifying schools within a district receiving funds shall be provided by the USOE.

(2) Qualifying schools shall complete the "Self Study for Meeting Comprehensive Guidance Program Standards" form provided by the USOE and supporting documentation, if requested.

(3) Qualifying schools shall receive on-site review of the program by team members designated by the school district. The on-site review team shall consist of at least five members.

(4) The district shall submit to the USOE the "Form for Program Approval" which has been completed by the Review Team, signed by the Team Chairperson and school/district personnel as indicated on the form.

(5) The "Form for Program Approval" shall be received by the USOE not later than May 20 of each year for disbursement of funds the next year.

(6) Programs approved and forms submitted by December

20 of each year MAY be considered for partial disbursement, if funds are available.

R277-462-4. Guidelines and Objectives for Individual and Small Group SEOP Conferences.

A. Districts shall provide annual individual SEOP conferences for students in grades 7-12 as directed in Section 53A-1a-106(2)(b)(ii)(C).

B. Pursuant to Section 53A-1a-106(2)(b)(iii)(A), the USOE provides the following guidelines and expectations:

(1) A small group SEOP conference should include no more than a classroom sized meeting of students together with the students' parents or guardians and an educator.

(2) The small group SEOP conference should initially address the purposes of the basic SEOP, including:

(a) the sharing of information useful for goal setting, problem solving, and planning related to a student's SEOP; and

(b) the defining of respective roles assumed by the school, the student, and parent(s) in formulating an SEOP for the student.

C. Parents, guardians and students should be advised that during grades 7 or 8, a small group SEOP conference is most effective when held or scheduled in conjunction with the Technology, Life and Careers course.

D. Parents, guardians and students should be advised that during grades 9 or 10, the small group SEOP conference is designed to acquaint parents or guardians and students with the course-work, career study, and activity options available to high school students.

E. Parents, guardians and students should be advised that during the 12th grade year, the small group SEOP conference is most effective when implemented before the end of October, so that parents, guardians and students can focus attention on the necessary decisions and the deadlines during the senior year.

R277-462-5. Use of Funds.

A. Funds disbursed for this program shall be used by the district at the district secondary schools in grades seven through twelve to provide a guidance curriculum and an SEOP for each student at the school, to provide responsive services, and to provide system support for the Comprehensive Guidance Program. Such costs may include the following:

(1) personnel costs;

(2) career center equipment such as computers, or media equipment;

(3) career center materials such as computer software, occupational information, SEOP folders, and educational information;

(4) in-service training of personnel involved in the Comprehensive Guidance Program;

(5) extended day or year if REQUIRED to run the program; and

(6) guidance curriculum materials for use in classrooms.

B. Funds shall not be used for non-guidance purposes or to supplant funds already being provided for the guidance program except that:

(1) Districts may pay for the costs incurred in hiring NEW personnel as a means of reducing the pupil/counselor ratio and eliminating time spent on non-guidance activities in order to meet the program criteria.

(2) Districts may pay other costs associated with a comprehensive guidance program which were incurred as a part of the program during the implementation phase but which WERE NOT a regular part of the program prior to that time.

R277-462-6. Reporting.

A. The USOE shall monitor the program and provide an annual report on its progress and success.

B. Districts shall certify on an annual basis that previously qualified schools continue to meet the program criteria and provide the USOE with data and information on the program as required.

KEY: public education, counselors
April 3, 2000 Art X Sec 3
Notice of Continuation September 30, 1999 53A-15-201
53A-17a-131.8

R277. Education, Administration.

R277-514. Board Procedures: Sanctions for Educator Misconduct.

R277-514-1. Definitions.

A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost licensure in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.

B. "Board" means the Utah State Board of Education.

C. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a unit of the public education system or an accredited private school.

D. "Licensure Committee" means a committee of the Board which reviews issues relating to licensure of educators.

E. "Commission" means the Utah Professional Practices Advisory Commission.

F. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

G. "Party" means the complainant or the respondent.

H. "Recommended disposition" means a recommendation for resolution of a complaint.

I. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

J. "Superintendent" means the State Superintendent of Public Instruction.

R277-514-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public schools in the Board, Section 53A-6-405 relating to withdrawal or denial of licensure by the Board for cause, Section 53A-6-307 in which the Board retains the power to issue or revoke licenses, hold hearings or take other disciplinary action as warranted, and Subsection 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to direct school administrators to refer incidents of educator misconduct to the Commission, provide for a review by the Superintendent of designated Commission actions and specify the procedures under which the Board may take action against an educator's license for misconduct.

R277-514-3. Administrative Review by Superintendent.

A. If an administrative action is taken by the Commission which results in a recommendation to the Board for:

(1) suspension of an educator's license for two years or more, or

(2) revocation of an educator's license,

B. Either party may request review by the Superintendent within 15 days from the date that the Commission sends written notice to both parties that the Commission has made its administrative recommendation.

C. The request for review shall consist of the following:

(1) name, position, and address of appellant;

(2) issue(s) being appealed; and

(3) signature of appellant.

D. If the Superintendent finds:

(1) that serious procedural errors have occurred which have violated the fundamental fairness of the process, then the Superintendent shall refer the case back to the Commission to correct the errors;

(2) that the findings or conclusions of the Commission are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Superintendent may refer the case back to the Commission for further action;

(3) that fundamental fairness for both parties was satisfied and that the Commission's decision was supported by a preponderance of the evidence, the Superintendent shall provide notice to both parties as provided and refer the matter to the Board for final disposition consistent with this rule.

R277-514-4. Licensure Committee Procedures.

A. Except as provided under Subsection R277-514-4(E), if the Board receives an allegation of misconduct by an educator, the allegation shall be forwarded to the Executive Secretary of the Professional Practices Advisory Commission for action under R686-100.

B. A case referred to the Board by the Commission, following review by the Superintendent, or upon appeal under R686-100-17C, shall be assigned to the Licensure Committee.

C. The Licensure Committee shall review the case file and the recommendation of the Commission. If the Licensure Committee finds that there have not been serious procedural errors on the part of the Commission, that the findings and conclusions of the Commission are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Licensure Committee shall approve the Commission's action and forward the case to the full Board for its consideration.

D. If the Licensure Committee finds that there is insufficient information in the case file to complete its work, the Licensure Committee may direct the parties to appear and present additional evidence or clarification.

E. If the Licensure Committee finds that serious procedural errors have occurred which have violated the fundamental fairness of the process, then the Licensure Committee shall refer the case back to the Commission to correct the errors.

F. If the Licensure Committee determines that the findings or conclusions of the Commission are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Licensure Committee may refer the case back to the Commission for further action or may, in the alternative, prepare its own findings, conclusions, or recommended disposition.

G. If the Licensure Committee prepares its own findings, conclusions, or recommendation, then the Licensure Committee shall forward its findings, conclusions, or recommendation to the Board together with the file as received from the Commission.

R277-514-5. Board Procedures.

A. Upon receiving a case from the Licensure Committee, the members of the Board may accept the recommendation of the Licensure Committee or may review the case file, findings, conclusions, and recommended disposition. If the Board finds that there have not been serious procedural errors, that the findings and conclusions are reasonable and supported by a preponderance of the evidence, and that the recommended disposition presents a reasonable resolution of the case, then the Board shall approve the findings and recommended disposition.

B. If the Board finds that serious procedural errors have occurred which have violated the fundamental fairness of the process, then the Board shall refer the case back to the Commission to correct the errors.

C. If the Board determines that the findings or conclusions are not supported by a preponderance of the evidence, or that the recommended disposition does not present a reasonable resolution of the case, then the Board may refer the case back to the Commission for further action or may, in the alternative, prepare other findings, conclusions, or disposition.

D. If the Board finds that there is insufficient information in the case file to complete its work, the Board may direct the parties to appear and present additional evidence or clarification.

E. If the Board finds it advisable to do so, the Board may initiate investigations or hearings regarding the initial or continued licensure of an individual and take disciplinary action upon its own volition without referring a given case to the Commission.

F. The Board shall issue a written order regarding its action which contains its conclusions and its disposition of the case, and direct the State Superintendent to serve a copy of the written order upon the parties.

G. All documents used by the Board in reaching its decision, and a copy of the Board's final order, shall be made part of the permanent case file.

H. The decision of the Board is final.

R277-514-6. Notification Requirements and Procedures.

A. An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school employee shall immediately report that belief to the school principal, district superintendent, or the Commission. A school administrator receiving such a report shall immediately submit the information to the Commission if the employee is licensed as an educator.

B. A local superintendent shall notify the Commission if an educator is found, pursuant to an administrative or judicial action, to be guilty of:

(1) unprofessional conduct or professional incompetence which results in suspension for more than one week or termination, or which otherwise warrants Commission review; or

(2) immoral behavior.

C. Failure to comply with Subsection A or B constitutes unprofessional conduct.

D. The State Office of Education shall notify the educator's employer of any final action taken by the Board; and shall notify all Utah school districts and the NASDTEC Educator Information Clearinghouse whenever a license is revoked or suspended, or if an educator has surrendered a license or allowed it to lapse in the face of allegations of misconduct rather than accept an opportunity to defend against the allegations.

KEY: disciplinary actions, professional competency, teacher licensure*

April 3, 2000	**Art X Sec 3**
Notice of Continuation September 12, 1997	**53A-6-104**
	53A-7-113
	53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-150. Emission Inventories.
R307-150-1. General Applicability.

(1) The following sources shall submit an emission inventory report:

(a) any Part 70 source;

(b) any source that emits or is allowed under R307 to emit 100 ton per year or more of any regulated air pollutant;

(c) any source located in Davis, Salt Lake, Utah or Weber County that emits or is allowed under R307 to emit 25 tons per year or more of a combination of PM10, sulfur oxides, or oxides of nitrogen;

(d) any source located in Davis, Salt Lake, Utah or Weber County that emits or is allowed under R307 to emit 10 tons per year or more of volatile organic compounds;

(e) any source that emits or is allowed under R307 to emit 5 tons per year or more of lead;

(f) any source that is allowed under R307 to emit between 90 and 100 tons per year of any regulated air pollutant;

(g) any source that the executive secretary requires to submit an inventory for any full or partial year on reasonable notice.

R307-150-2. Definitions.

The following additional definitions apply to R307-150:

"Acute Contaminant" means any noncarcinogenic air contaminant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 40 (1997)."

"Carcinogenic Contaminant" means any air contaminant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 40 (1997)."

"Chronic Contaminant" means any noncarcinogenic air contaminant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 40 (1997)."

"Dioxins" and "Furans" mean total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

R307-150-3. What to Report.

(1) The requirements of R307-150 replace any annual inventory reporting requirements in approval orders issued prior to April 1, 1998.

(2) The emission inventory report shall include the information the Board deems necessary to determine whether the source is in compliance with R307 and federal regulations and standards. The data shall include all regulated air pollutants not exempted in (3) below that are not hazardous air pollutants that are emitted at a source. Data shall include the rate and period of emission, excess or breakdown emissions, startup and shut down emissions, specific installation which is the source of the air pollution, composition of air contaminant, type and efficiency of the air pollution control equipment and other information necessary to quantify operation and emissions, and to evaluate pollution control. The emissions of a pollutant shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the inventoried time period.

(3) Regulated air pollutants that are not PM10, sulfur oxides, oxides of nitrogen, carbon monoxide, PM2.5, ozone, volatile organic compounds, dioxins, furans, or hazardous air pollutants are exempt from being reported if they are emitted in an amount less than the smaller of the following:

(a) 500 pounds per year; or

(b) an annual emission level calculated to be the applicable threshold limit value - time weighted average (TLV-TWA) or the threshold limit value - ceiling (TLV-C) multiplied by the appropriate emission threshold factor in cubic meter pounds per milligram year. For an acute contaminant, the factor is 15.81; for a chronic contaminant, the factor is 21.22; for a carcinogenic contaminant, the factor is 7.07.

(4) In addition, any owner or operator of a source that is required by R307-150-1 to submit an inventory shall use appropriate emission factors and estimating techniques to estimate all emissions from each activity not required by R307-401 or R307-415 to be included in a notice of intent or operating permit application. The estimates shall be included in the inventory.

R307-150-4. Timing of Submittals.

(1) Report Every Third Year. The owner or operator of each of the following sources is required to submit a report of emissions every third year. The first report shall be due in 2000 for calendar year 1999 for:

(a) any Part 70 source located in Davis, Salt Lake, Utah or Weber Counties;

(b) any Part 70 temporary source;

(c) any Part 70 source located outside Davis, Salt Lake, Utah or Weber Counties with 25 tons per year or more of combined allowable emissions of PM10, sulfur oxides, oxides of nitrogen, volatile organic compounds or carbon monoxide; or

(d) any stationary source:

(i) located in Davis, Salt Lake, Utah or Weber County that emits or is allowed under R307 to emit a combination of PM10, sulfur oxides, or oxides of nitrogen of 25 tons per year or more;

(ii) located in Davis, Salt Lake, Utah or Weber County that emits or is allowed under R307 to emit 10 tons per year or more of volatile organic compounds;

(iii) located in Davis, Salt Lake, Weber, or Utah County that emits or is allowed under R307 to emit 100 tons per year or more of carbon monoxide;

(iv) that emits 100 tons per year or more of any regulated air pollutant; or

(v) that emits or is allowed to emit 5 tons per year or more of lead;

(e) any source that is allowed under R307 to emit between 90 and 100 tons per year of any regulated air pollutant.

(2) Report Every Sixth Year. Any Part 70 source not included in R307-150-3(2) shall submit an emissions inventory every sixth year. The inventory for calendar year 1996 suffices

as the first inventory.

(3) Additional Reports of Emissions Required Under Specified Circumstances. This subsection is applicable to all sources identified in R307-150-1.

(a) A source that initially achieves compliance at any time with any requirement of an applicable state implementation plan shall submit an inventory for the calendar year in which compliance is achieved.

(b) A source that emits or is allowed under R307 to emit 100 or more tons per year of any regulated air pollutant and whose emissions of any of these pollutants increase or decrease by five percent or more from the most recently submitted inventory shall submit an inventory for the calendar year in which the increase or decrease occurred.

(c) A source operating temporarily shall submit an inventory for the calendar year in which the source operated.

(d) A source that is not a temporary source, is required to submit an inventory, and ceases operations shall submit a report of emissions for the partial year and a report for the previous calendar year, if not already submitted.

(e) A new or modified source that is not a temporary source, is required to submit an inventory, and receives approval to construct or begins operating shall submit a report for the initial partial year of operation and a report for the subsequent calendar year.

(4) In addition to the required inventories, any source may choose to submit an inventory for any calendar year. The executive secretary may require at any time a full or partial year inventory on reasonable notice to affected sources.

(5) Due Date. Emission inventories shall be submitted on or before April 15 of each calendar year following any calendar year in which an inventory is required.

R307-150-5. Recordkeeping Requirements.

(1) Each owner or operator of a stationary source subject to this rule shall maintain a copy of the emission inventory submitted to the Division of Air Quality and records indicating how the information submitted in the inventory was determined, including any calculations, data, measurements, and estimates used. The records shall be kept for a period of at least five years from the due date of each emission statement or until the next inventory is due, whichever is longer.

(2) Upon the request of the executive secretary, the owner or operator of the stationary source shall make these records available at the stationary source for inspection by any representative of the Division of Air Quality during normal business hours.

KEY: air pollution, reports, inventories
April 6, 2000 19-2-104(1)(c)

R307. Environmental Quality, Air Quality.
R307-320. Davis, Salt Lake and Utah Counties, and Ogden City: Employer-Based Trip Reduction Program.
R307-320-1. Purpose.

The purpose of this program is to reduce the number of measurable vehicle miles driven by employees commuting to and from work by requiring employers with work sites within Davis and Salt Lake Counties to implement strategies designed to reduce the employee drive-alone rate. Under the authority of 19-2-104(1)(h) and (2), an employer-based trip reduction program is a state implementation plan control strategy to reduce ambient measures of air pollution. An added benefit of the program is reducing the number of cars on increasingly congested roadways.

R307-320-2. Applicability.

(1) R307-320 applies to any federal, state, or local entity, or any other public department, district (including public universities and public school districts), or agency in Davis or Salt Lake County.

(2) If the Contingency Requirements for fine particulate are triggered as outlined in Section IX.A.8.b of the State Implementation Plan, R307-320 applies to any federal, state, or local entity, or any other public department, district (including public universities and public school districts), or agency in Utah County.

(3) If the Contingency Requirements for carbon monoxide are triggered as outlined in Section IX.C.8.h of the State Implementation Plan, R307-320 applies to any federal, state, or local entity, or any other public department, district (including public universities and public school districts), or agency in Ogden City.

R307-320-3. Definitions.

The following additional definitions apply to R307-320:

"Compressed Work Week" means any work schedule which eliminates at least one commute trip to a work site in each two week period.

"Drive-alone Rate" means the number of single-occupancy vehicles divided by the sum of single-occupancy vehicles, plus employees using mass transit, ridesharing, biking, walking, telecommuting or having credit for a compressed work week. The drive-alone rate calculation must be based on a typical Monday through Friday work week.

Drive-alone Rate = single-occupancy vehicles/(single-occupancy vehicles + mass transit users + rideshare participants + bikers + walkers + telecommuters + credit for compressed work week).

"Employee" means any person including persons employed by public universities or school districts, who works at or reports to a single work site at least three days per week for at least six months of the year.

"Employee Transportation Coordinator" means a person assigned the responsibility of developing, implementing, monitoring, tracking, and marketing the trip reduction plan for the employer.

"Employer" means federal, state, or local entity, or any other public department, district (including public universities or public school districts), or agency.

"Peak Travel Period" means the period beginning at 6 a.m. and ending at 10 a.m., Mondays through Fridays.

"Ridesharing" means transportation of more than one person for commute purposes in a vehicle.

"Single-occupancy Vehicles" means vehicles traveling to the work site with a driver and no passengers during the peak travel period.

"Target Drive-alone Rate" means a twenty percent reduction in the drive alone rate based on the 1990 census data for modes of travel in each county. The target drive-alone rate schedule is as follows:

TABLE
TARGET DRIVE-ALONE RATE SCHEDULE

	Davis County Drive-Alone Rate	Salt Lake County Drive-Alone Rate
From 1990 Census Data	0.76	0.77
1st year interim target drive-alone rate	0.72	0.73
2nd year interim target drive-alone rate	0.68	0.69
3rd year interim target drive-alone rate	0.67	0.67
4th year interim target drive-alone rate	0.65	0.65
5th year interim target drive-alone rate	0.63	0.64
6th year interim target drive-alone rate	0.61	0.62
Target drive-alone rate	0.61	0.62

"Telecommuting" means working at home or at a satellite work site, provided the employee does not use a single-occupancy vehicle to travel to the satellite work site.

"Trip Reduction Plan" means a set of strategies designed to reduce the drive-alone rate.

"Vehicle" means motorcycles and on-road vehicles powered by a gasoline or diesel internal combustion engine with nine or less seating positions for adults.

"Work Site" means a building and any group of buildings which are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of way.

R307-320-4. Employer Requirements.

(1) Each employer shall assign an employee trip reduction coordinator within 30 days after the effective date of R307-320.

(2) Each employer shall determine the drive-alone rate per work site on an annual basis for a typical Monday through Friday work week during the peak travel period. The drive-alone rate can be determined by one of the following methods in (a), (b) or (c) below.

(a) Information from an annual employee survey.

(i) The employer must use a standardized survey approved by the executive secretary. The survey shall ask the travel distance from the employee's home to the work site, what frequency and mode of transportation the employee used to get to work, and how often the employee participates in a telecommuting program or compressed work week schedule.

(ii) The employer shall administer the survey and shall

capture, at a minimum, 75% of the employee population arriving at the work site during the peak travel period.

(b) Verifiable information, less than one year old of the submittal due date, from employer records including:

(i) employee work schedules;

(ii) employee participation in telecommuting schedules;

(iii) employee participation of mass transit;

(iv) employee participation in rideshare arrangements; and

(v) employee participation in non-vehicular transit.

(c) Another method of the employer's choosing, with written approval from the executive secretary.

(3) Each employer shall design and submit to the executive secretary an approvable trip reduction plan for each work site to meet the target drive-alone rate as specified by the target drive-alone rate schedule in R307-320-3.

(a) An employer may combine more than one work site in a trip reduction plan submittal.

(i) The target drive-alone rate for a multi-work site submission shall be a weighted average of the drive-alone rates for the individual work sites.

(ii) The employer may combine a trip reduction plan for any work site within the same county.

(b) The trip reduction plan submittal shall adhere to the following schedule:

(i) Submittal of a trip reduction plan shall be annually on or before the anniversary of the initial due date.

(ii) For employers within Salt Lake and Davis Counties:

(A) The trip reduction plan must be submitted for approval within 90 days after the employer has been notified.

(B) If the employer has not been notified, then the trip reduction plan must be submitted no later than 360 days after the effective date of this rule.

(iii) For employers within Utah County, the trip reduction plan must be submitted within 90 days after notification by the Division of Air Quality following triggering of contingency measures for PM10 under the provisions of Section IX.A.8.b of the State Implementation Plan.

(c) Materials and information submitted to the executive secretary shall include:

(i) A letter of commitment to fully implement an approved trip reduction plan signed by an authorized employee at the work site.

(ii) The name and signature of the employee transportation coordinator;

(iii) The drive-alone rate for the work site;

(iv) General work site information including name and address of organization; general layout of buildings and parking areas; location of major streets; location of nearby mass transit stops; number of total employees; number of employees arriving at the work site during peak travel periods; current and planned incentives, disincentives, and facilities available encouraging alternatives to single-occupant vehicle commuting; the type of activities conducted at the work site; and the time spent by the employee transportation coordinator in complying with the plan.

(d) A trip reduction plan designed to meet the target drive-alone rate schedule may include but is not limited to employer involvement in the following:

(i) Subsidized bus passes;

(ii) Rideshare matching programs;

(iii) Vanpool leasing programs;

(iv) Telecommuting programs;

(v) Compressed work week schedule programs and flexible work schedule programs;

(vi) Work site parking fee programs;

(vii) Preferential parking for rideshare participants;

(viii) Transportation for business related activities;

(ix) A guaranteed ride home program;

(x) On-site facility improvements;

(xi) Soliciting feedback from employees;

(xii) On-site daycare facilities;

(xiii) Coordination with local transit authorities for improved mass transit service and information on mass transit programs; and

(xiv) Recognition and rewards for employee participation.

(e) An approvable plan shall contain all the information required in R307-320-4. The executive secretary shall approve or request revision of the trip reduction plan within 60 days of the plan submittal.

(4) Each employer shall implement a trip reduction plan approved by the executive secretary.

(5) Each employer shall inform employees of the trip reduction plan and options available to them for participation.

R307-320-5. Recordkeeping.

(1) The employer shall keep records of all documents necessary to prove compliance with and verify implementation of an approved trip reduction plan for at least two years from the plan approval date.

(2) Approved trip reduction plans shall be kept for five years from date of approval.

(3) Employer trip reduction records are subject to review by representatives of the executive secretary.

R307-320-6. Violations.

(1) The following are violations of this rule:

(a) failure to submit an approvable employer-based trip reduction plan as specified in R307-320-4;

(b) providing false information;

(c) failure to submit a revised employer-based trip reduction plan when requested by the executive secretary;

(d) failure to implement an approved trip reduction plan;

(e) failure to maintain records as specified in R307-320-5;

(f) upon receipt of the second disapproval notice and until a revised plan is submitted and approved, the employer is in violation of this rule.

(2) Failure to achieve the target drive-alone rate is not a violation of this rule.

R307-320-7. Exemptions.

(1) An employer with less than 100 employees at a work site is exempt from the requirements of this rule.

(2) An employer who has met the target drive-alone rate is exempt from requirements stated in R307-320-4(3) and (4). The employer must still submit the drive-alone rate information to the executive secretary annually.

(3) Employees using vehicles for commute purposes as part of their job responsibility for emergency response are exempt from the drive-alone rate determination if they do not

have the option, because of employer policies, to participate in telecommuting programs, compressed work week schedules, or as a rideshare driver, as approved by the executive secretary.

(a) An employer seeking exemption status shall comply with all requirements of the rule until an exemption is granted.

(b) The executive secretary shall approve or deny a request for exemption within 90 days of application.

(4) Other exemptions may be granted on a case by case basis and must be approved by the executive secretary.

(a) The employer seeking exemption must be able to demonstrate that the trip reduction program causes an adverse impact on the employer's ability to provide services or creates an undue hardships.

(b) The employer may also seek an exemption by providing an alternative to the Trip Reduction Program that shows, at a minimum, for the work site seeking exemption, a reduction in oxides of nitrogen equivalent to that achieved by the Trip Reduction Program when implemented to the target drive-alone rate schedule in the table in R307-320-3. The employer shall provide all substantiating information and calculations.

(c) An employer seeking exemption status shall comply with all requirements of the rule until an exemption is granted.

(d) The executive secretary shall approve or deny a request for exemption within 90 days of application.

KEY: air pollution, motor vehicles, trip reduction*
September 15, 1998 19-2-104
Notice of Continuation April 5, 2000

R307. Environmental Quality, Air Quality.
R307-415. Permits: Operating Permit Requirements.
R307-415-1. Purpose.

Title V of the Clean Air Act (the Act) requires states to develop and implement a comprehensive air quality permitting program. Title V of the Act does not impose new substantive requirements. Title V does require that sources subject to R307-415 pay a fee and obtain a renewable operating permit that clarifies, in a single document, which requirements apply to a source and assures the source's compliance with those requirements. The purpose of R307-415 is to establish the procedures and elements of such a program.

R307-415-2. Authority.

R307-415 is required by Title V of the Act and 40 Code of Federal Regulations (CFR) Part 70, and is adopted under the authority of Section 19-2-104.

R307-415-3. Definitions.

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the Executive Secretary offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the Executive Secretary that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion

engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant, including any major source of fugitive emissions or fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to any one of the following categories of stationary source:

(i) Coal cleaning plants with thermal dryers;

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants, furnace process;

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) All other stationary source categories regulated by a standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources, or Section 112 of the Act, Hazardous Air Pollutants, but only with respect to those air pollutants that have been regulated for that category.

(c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;

(iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system), that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the Executive Secretary proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal

business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the Executive Secretary;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

R307-415-4. Applicability.

(1) Part 70 sources. All of the following sources are subject to the permitting requirements of R307-415, and unless exempted under (2) below are required to submit an application for an operating permit:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(c) Any source, including an area source, subject to a standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Act, Prevention of Accidental Releases;

(d) Any Title IV affected source.

(2) Source category exemptions. The following source categories are exempted from the requirement to obtain an operating permit.

(a) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters;

(b) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation. For Part 70 sources, demolition and renovation activities within the source under 40 CFR 61.145 shall be treated as a separate source for the purpose of R307-415.

(3) Emissions units and Part 70 sources.

(a) For major sources, the Executive Secretary shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any area source subject to the operating permit program under R307-415-4(1) or (2), the Executive Secretary shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the operating permit program.

(4) Fugitive emissions. Fugitive emissions and fugitive dust from a Part 70 source shall be included in the permit application and the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of source categories contained in the definition of major source.

(5) Control requirements. R307-415 does not establish any new control requirements beyond those established by applicable requirements, but may establish new monitoring, recordkeeping, and reporting requirements.

(6) Synthetic minors. An existing source that wishes to avoid designation as a major Part 70 source under R307-415, must obtain federally-enforceable conditions which reduce the potential to emit, as defined in R307-101-2, to less than the level established for a major Part 70 source. Such federally-enforceable conditions may be obtained by applying for and receiving an approval order under R307-401. The approval order shall contain periodic monitoring, recordkeeping, and reporting requirements sufficient to verify continuing compliance with the conditions which would reduce the source's potential to emit.

R307-415-5a. Permit Applications: Duty to Apply.

For each Part 70 source, the owner or operator shall submit a timely and complete permit application. A pre-application conference may be held at the request of a Part 70 source or the Executive Secretary to assist a source in submitting a complete application.

(1) Timely application.

(a) Except as provided in the transition plan under (3) below, a timely application for a source applying for an operating permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program.

(b) Except as provided in the transition plan under (3) below, any Part 70 source required to meet the requirements under Section 112(g) of the Act, Hazardous Air Pollutant Modifications, or required to receive an approval order to construct a new source or modify an existing source under R307-401, shall file a complete application to obtain an operating permit or permit revision within 12 months after commencing operation of the newly constructed or modified source. Where an existing operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted by the renewal date established in the permit. The Executive Secretary shall establish a renewal date for each permit that is at least six months and not greater than 18 months prior to the date of permit expiration. A source may submit a permit application early for any reason, including timing of other application requirements.

(2) Complete application.

(a) To be deemed complete, an application must provide all information sufficient to evaluate the subject source and its application and to determine all applicable requirements pursuant to R307-415-5c. Applications for permit revision need supply such information only if it is related to the proposed change. A responsible official shall certify the submitted information consistent with R307-415-5d.

(b) Unless the Executive Secretary notifies the source in writing within 60 days of receipt of the application that an application is not complete, such application shall be deemed to be complete. A completeness determination shall not be required for minor permit modifications. If, while processing an application that has been determined or deemed to be complete, the Executive Secretary determines that additional information is necessary to evaluate or take final action on that application, the Executive Secretary may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in R307-415-7b(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified in writing by the Executive Secretary.

(3) Transition Plan. A timely application under the transition plan is an application that is submitted according to the following schedule:

(a) All Title IV affected sources shall submit an operating permit application as well as an acid rain permit application in accordance with the date required by 40 CFR Part 72 effective April 11, 1995, Subpart C-Acid Rain Permit Applications;

(b) All major Part 70 sources operating as of July 10, 1995, except those described in (a) above, and all solid waste incineration units operating as of July 10, 1995, that are required to obtain an operating permit pursuant to 42 U.S.C. Sec. 7429(e) shall submit a permit application by October 10, 1995.

(c) Area sources.

(i) Except as provided in (c)(ii) and (c)(iii) below, each Part 70 source that is not a major source, a Title IV affected source, or a solid waste incineration unit required to obtain a permit pursuant to section 129(e) (42 U.S.C. 7429), is deferred from the obligation to submit an application until 12 months after the Administrator completes a rulemaking to determine how the program should be structured for area sources and the appropriateness of any permanent exemptions in addition to those provided in R307-415-4(2).

(ii) General Permits.

(A) The Executive Secretary shall develop general permits and application forms for area source categories.

(B) After a general permit has been issued for a source category, the Executive Secretary shall establish a due date for permit applications from all area sources in that source category.

(C) The Executive Secretary shall provide at least six months notice that the application is due for a source category.

(iii) Regulation-specific Requirements.

(A) If a regulation promulgated under Section 111 or 112 (42 U.S.C. 7411 or 7412) requires an area source category to submit an application for a Part 70 permit, each area source covered by the requirement must submit an application in accordance with the regulation.

(d) Extensions. The owner or operator of any Part 70 source may petition the Executive Secretary for an extension of the application due date for good cause. The due date for major Part 70 sources shall not be extended beyond July 10, 1996. The due date for an area source shall not be extended beyond twelve months after the due date in (c)(i) above.

(e) Application shield. If a source submits a timely and complete application under this transition plan, the application shield under R307-415-7b(2) shall apply to the source. If a source submits a timely application and is making sufficient progress toward correcting an application determined to be incomplete, the Executive Secretary may extend the application shield under R307-415-7b(2) to the source when the application is determined complete. The application shield shall not be extended to any major source that has not submitted a complete application by July 10, 1996, or to any area source that has not submitted a complete application within twelve months after the due date in (c)(i) above.

(4) Confidential information. Claims of confidentiality on information submitted to EPA may be made pursuant to applicable federal requirements. Claims of confidentiality on information submitted to the Department shall be made and governed according to Section 19-1-306. In the case where a source has submitted information to the Department under a claim of confidentiality that also must be submitted to the EPA, the Executive Secretary shall either submit the information to the EPA under Section 19-1-306, or require the source to submit a copy of such information directly to EPA.

(5) Late applications. An application submitted after the deadlines established in R307-415-5a shall be accepted for processing, but shall not be considered a timely application. Submitting an application shall not relieve a source of any enforcement actions resulting from submitting a late application.

R307-415-5b. Permit Applications: Duty to Supplement or Correct Application.

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

R307-415-5c. Permit Applications: Standard Requirements.

Information as described below for each emissions unit at a Part 70 source shall be included in the application except for insignificant activities and emissions levels under R307-415-5e. The operating permit application shall include the elements specified below:

(1) Identifying information, including company name, company address, plant name and address if different from the company name and address, owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products by Standard Industrial Classification Code, including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) A permit application shall describe the potential to emit of all air pollutants for which the source is major, and the potential to emit of all regulated air pollutants and hazardous air pollutants from any emissions unit, except for insignificant activities and emissions under R307-415-5e. For emissions of hazardous air pollutants under 1,000 pounds per year, the following ranges may be used in the application: 1-10 pounds per year, 11-499 pounds per year, 500-999 pounds per year. The mid-point of the range shall be used to calculate the emission fee under R307-415-9 for hazardous air pollutants reported as a range.

(b) Identification and description of all points of emissions described in (a) above in sufficient detail to establish the basis for fees and applicability of applicable requirements.

(c) Emissions rates in tons per year and in such terms as are necessary to establish compliance with applicable requirements consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants and hazardous air pollutants at the Part 70 source.

(g) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act.

(h) Calculations on which the information in items (a) through (g) above is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce applicable requirements or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the Executive Secretary to define alternative operating scenarios identified by the source pursuant to R307-415-6a(9) or to define permit terms and conditions implementing emission trading under R307-415-7d(1)(c) or R307-415-6a(10).

(8) A compliance plan for all Part 70 sources that contains all of the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary, for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, Acid Deposition Control, with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including all of the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with R307-415-5d and Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test method.

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary.

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act, Acid Deposition Control.

R307-415-5d. Permit Applications: Certification.

Any application form, report, or compliance certification submitted pursuant to R307-415 shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under R307-415 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

R307-415-5e. Permit Applications: Insignificant Activities and Emissions.

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under R307-415-9. The following lists apply only to operating permit applications and do not affect the applicability of R307-415 to a source, do not affect the requirement that a source receive an approval order under R307-401, and do not relieve a source of the responsibility to comply with any applicable requirement.

(1) The following insignificant activities and emission levels are not required to be included in the permit application.

(a) Exhaust systems for controlling steam and heat that do not contain combustion products, except for systems that are subject to an emission standard under any applicable requirement.

(b) Air contaminants that are present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or air contaminants that are present in compressed air or in ambient air, which may contain air pollution, used for combustion.

(c) Air conditioning or ventilating systems not designed to remove air contaminants generated by or released from other processes or equipment.

(d) Disturbance of surface areas for purposes of land development, not including mining operations or the disturbance of contaminated soil.

(e) Brazing, soldering, or welding operations.

(f) Aerosol can usage.

(g) Road and parking lot paving operations, not including asphalt, sand and gravel, and cement batch plants.

(h) Fire training activities that are not conducted at permanent fire training facilities.

(i) Landscaping, janitorial, and site housekeeping activities, including fugitive emissions from landscaping activities.

(j) Architectural painting.

(k) Office emissions, including cleaning, copying, and restrooms.

(l) Wet wash aggregate operations that are solely dedicated to this process.

(m) Air pollutants that are emitted from personal use by employees or other persons at the source, such as foods, drugs, or cosmetics.

(n) Air pollutants that are emitted by a laboratory at a facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee); however, this exclusion does not apply to specialty chemical production, pilot plant scale operations, or activities conducted outside the laboratory.

(o) Maintenance on petroleum liquid handling equipment such as pumps, valves, flanges, and similar pipeline devices and appurtenances when purged and isolated from normal operations.

(p) Portable steam cleaning equipment.

(q) Vents on sanitary sewer lines.

(r) Vents on tanks containing no volatile air pollutants, e.g., any petroleum liquid, not containing Hazardous Air Pollutants, with a Reid Vapor Pressure less than 0.05 psia.

(2) The following insignificant activities are exempted because of size or production rate and a list of such insignificant activities must be included in the application. The Executive Secretary may require information to verify that the activity is insignificant.

(a) Emergency heating equipment, using coal, wood, kerosene, fuel oil, natural gas, or LPG for fuel, with a rated capacity less than 50,000 BTU per hour.

(b) Individual emissions units having the potential to emit less than one ton per year per pollutant of PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide, unless combined emissions from similar small emission units located within the same Part 70 source are greater than five tons per year of any one pollutant. This does not include emissions units that emit air contaminants other than PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide.

(c) Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in amounts less than 500 parts per million by weight, and having the potential to emit less than five tons per year per air contaminant.

(d) Road sweeping.

(e) Road salting and sanding.

(f) Unpaved public and private roads, except unpaved haul roads located within the boundaries of a stationary source. A haul road means any road normally used to transport people, livestock, product or material by any type of vehicle.

(g) Non-commercial automotive (car and truck) service stations dispensing less than 6,750 gal. of gasoline/month

(h) Hazardous Air Pollutants present at less than 1% concentration, or 0.1% for a carcinogen, in a mixture used at a rate of less than 50 tons per year, provided that a National Emission Standards for Hazardous Air Pollutants standard does not specify otherwise.

(i) Fuel-burning equipment, in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure, with a rated capacity of less than five million BTU per hour using no other fuel than natural gas, or LPG or other mixed gas distributed by a public utility.

(j) Comfort heating equipment (i.e., boilers, water heaters,

air heaters and steam generators) with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6.

(3) Any person may petition the Board to add an activity or emission to the list of Insignificant Activities and Emissions which may be excluded from an operating permit application under (1) or (2) above upon a change in the rule and approval of the rule change by EPA. The petition shall include the following information:

(a) A complete description of the activity or emission to be added to the list.

(b) A complete description of all air contaminants that may be emitted by the activity or emission, including emission rate, air pollution control equipment, and calculations used to determine emissions.

(c) An explanation of why the activity or emission should be exempted from the application requirements for an operating permit.

(4) The executive secretary may determine on a case-by-case basis, insignificant activities and emissions for an individual Part 70 source that may be excluded from an application or that must be listed in the application, but do not require a detailed description. No activity with the potential to emit greater than two tons per year of any criteria pollutant, five tons of a combination of criteria pollutants, 500 pounds of any hazardous air pollutant or one ton of a combination of hazardous air pollutants shall be eligible to be determined an insignificant activity or emission under this subsection (4).

R307-415-6a. Permit Content: Standard Requirements.

Each permit issued under R307-415 shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit shall state that, where an applicable requirement is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, Acid Deposition Control, both provisions shall be incorporated into the permit.

(c) If the State Implementation Plan allows a determination of an alternative emission limit at a Part 70 source, equivalent to that contained in the State Implementation Plan, to be made in the permit issuance, renewal, or significant modification process, and the Executive Secretary elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Except as provided by Section 19-2-109.1(3), the Executive Secretary shall issue permits for a fixed term of five years.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(i) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(ii) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to (3)(c) below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph;

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The dates analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses;

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require all of the following:

(i) Submittal of reports of any required monitoring every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with R307-415-5d.

(ii) Prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The

Executive Secretary shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the unavoidable breakdown provisions of R307-107. The Executive Secretary may establish more stringent reporting deadlines if required by the applicable requirement.

(d) Claims of confidentiality shall be governed by Section 19-1-306.

(4) Acid Rain Allowances. For Title IV affected sources, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Standard provisions stating the following:

(a) The permittee must comply with all conditions of the operating permit. Any permit noncompliance constitutes a violation of the Air Conservation Act and is grounds for any of the following: enforcement action; permit termination; revocation and reissuance; modification; denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition, except as provided under R307-415-7f(1) for minor permit modifications.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the Executive Secretary, within a reasonable time, any information that the Executive Secretary may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Executive Secretary copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(7) Emission fee. A provision to ensure that a Part 70 source pays fees to the Executive Secretary consistent with R307-415-9.

(8) Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Alternate operating scenarios. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Executive Secretary. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of R307-415.

(10) Emissions trading. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under R307-415-6a and 6c to determine compliance;

(b) Shall extend the permit shield to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of R307-415.

R307-415-6b. Permit Content: Federally-Enforceable Requirements.

(1) All terms and conditions in an operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by EPA and citizens under the Act.

(2) Notwithstanding (1) above, applicable requirements that are not required by the Act or implementing federal regulations shall be included in the permit but shall be specifically designated as being not federally enforceable under the Act and shall be designated as "state requirements." Terms and conditions so designated are not subject to the requirements of R307-415-7a through 7i and R307-415-8 that apply to permit review by EPA and affected states. The Executive Secretary shall determine which conditions are "state requirements" in each operating permit.

R307-415-6c. Permit Content: Compliance Requirements.

All operating permits shall contain all of the following elements with respect to compliance:

(1) Consistent with R307-415-6a(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including any report, required by an operating permit shall contain a certification by

a responsible official that meets the requirements of R307-415-5d;

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Executive Secretary or an authorized representative to perform any of the following:

(a) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(e) Claims of confidentiality on the information obtained during an inspection shall be made pursuant to Section 19-1-306;

(3) A schedule of compliance consistent with R307-415-5c(8);

(4) Progress reports consistent with an applicable schedule of compliance and R307-415-5c(8) to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the Executive Secretary. Such progress reports shall contain all of the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved;

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:

(a) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the Executive Secretary;

(b) In accordance with R307-415-6a(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may reference the permit or previous reports, as applicable):

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under R307-415-6a(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(iii) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in (ii) above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and

(iv) Such other facts as the executive secretary may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the Executive Secretary;

(e) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification, and Section 504(b) of the Act, Monitoring and Analysis;

(6) Such other provisions as the Executive Secretary may require.

R307-415-6d. Permit Content: General Permits.

(1) The Executive Secretary may, after notice and opportunity for public participation provided under R307-415-7i, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Executive Secretary shall grant the conditions and terms of the general permit. Notwithstanding the permit shield, the source shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be issued for Title IV affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the Executive Secretary for coverage under the terms of the general permit or must apply for an operating permit consistent with R307-415-5a through 5e. The Executive Secretary may, in the general permit, provide for applications which deviate from the requirements of R307-415-5a through 5e, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under R307-415-7i, the Executive Secretary may grant a source's request for authorization to operate under a general permit, but such a grant to a qualified source shall not be a final permit action for purposes of judicial review.

R307-415-6e. Permit Content: Temporary Sources.

The owner or operator of a permitted source may temporarily relocate the source for a period not to exceed that allowed by R307-401-7. A permit modification is required to relocate the source for a period longer than that allowed by R307-401-7. No Title IV affected source may be permitted as a temporary source. Permits for temporary sources shall include

all of the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator receive approval to relocate under R307-401-7 before operating at the new location;

(3) Conditions that assure compliance with all other provisions of R307-415.

R307-415-6f. Permit Content: Permit Shield.

(1) Except as provided in R307-415, the Executive Secretary shall include in each operating permit a permit shield provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The Executive Secretary, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any operating permit shall alter or affect any of the following:

(a) The emergency provisions of Section 19-1-202 and Section 19-2-112, and the provisions of Section 303 of the Act, Emergency Orders, including the authority of the Administrator under that Section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements under Section 19-2-107(2)(g) and Section 19-2-110 prior to or at the time of permit issuance;

(c) The applicable requirements of the Acid Rain Program, consistent with Section 408(a) of the Act;

(d) The ability of the Executive Secretary to obtain information from a source under Section 19-2-120, and the ability of EPA to obtain information from a source under Section 114 of the Act, Inspection, Monitoring, and Entry.

R307-415-6g. Permit Content: Emergency Provision.

(1) Emergency. An "emergency" is any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of (3) below are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the Executive Secretary within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of R307-415-6a(3)(c)(ii). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

R307-415-7a. Permit Issuance: Action on Application.

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The Executive Secretary has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit;

(b) Except for modifications qualifying for minor permit modification procedures under R307-415-7f(1)and (2), the Executive Secretary has complied with the requirements for public participation under R307-415-7i;

(c) The Executive Secretary has complied with the requirements for notifying and responding to affected States under R307-415-8(2);

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of R307-415;

(e) EPA has received a copy of the proposed permit and any notices required under R307-415-8(1) and (2), and has not objected to issuance of the permit under R307-415-8(3) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under R307-415-5a(3) or under regulations promulgated under Title IV of the Act for the permitting of Title IV affected sources under the Acid Rain Program, the Executive Secretary shall take final action on each permit application, including a request for permit modification or renewal, within 18 months after receiving a complete application.

(3) The Executive Secretary shall promptly provide notice to the applicant of whether the application is complete. Unless the Executive Secretary requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. A completeness determination shall not be required for minor permit modifications.

(4) The Executive Secretary shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or

regulatory provisions. The Executive Secretary shall send this statement to EPA and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have an approval order under R307-401.

R307-415-7b. Permit Issuance: Requirement for a Permit.

(1) Except as provided in R307-415-7d and R307-415-7f(1)(f)and 7f(2)(e), no Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under these rules.

(2) Application shield. If a Part 70 source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have an operating permit is not a violation of R307-415 until the Executive Secretary takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to R307-415-7a(3), and as required by R307-415-5a(2), the applicant fails to submit by the deadline specified in writing by the Executive Secretary any additional information identified as being needed to process the application.

R307-415-7c. Permit Renewal and Expiration.

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with R307-415-7b and R307-415-5a(1)(c).

(3) If a timely and complete renewal application is submitted consistent with R307-415-7b and R307-415-5a(1)(c)and the Executive Secretary fails to issue or deny the renewal permit before the end of the term of the previous permit, then all of the terms and conditions of the permit, including the permit shield, shall remain in effect until renewal or denial.

R307-415-7d. Permit Revision: Changes That Do Not Require a Revision.

(1) Operational Flexibility.

(a) A Part 70 source may make changes that contravene an express permit term if all of the following conditions have been met:

(i) The source has obtained an approval order, or has met the exemption requirements under R307-402;

(ii) The change would not violate any applicable requirements or contravene any federally enforceable permit terms and conditions for monitoring, including test methods, recordkeeping, reporting, or compliance certification requirements;

(iii) The changes are not modifications under any provision of Title I of the Act; and the changes do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

(iv) For each such change, the source shall provide written notice to the Executive Secretary and send a copy of the notice to EPA at least seven days before implementing the proposed change. The seven-day requirement may be waived by the Executive Secretary in the case of an emergency. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield shall not apply to these changes. The source, the EPA, and the Executive Secretary shall attach each such notice to their copy of the relevant permit.

(b) Emission trading under the State Implementation Plan. Permitted sources may trade increases and decreases in emissions in the permitted facility, where the State Implementation Plan provides for such emissions trades, without requiring a permit revision provided the change is not a modification under any provision of Title I of the Act, the change does not exceed the emissions allowable under the permit, and the source notifies the Executive Secretary and the EPA at least seven days in advance of the trade. This provision is available in those cases where the permit does not already provide for such emissions trading.

(i) The written notification required above shall include such information as may be required by the provision in the State Implementation Plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the State Implementation Plan and that provide for the emissions trade.

(ii) The permit shield shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the State Implementation Plan authorizing the emissions trade.

(c) If a permit applicant requests it, the Executive Secretary shall issue permits that contain terms and conditions, including all terms required under R307-415-6a and 6c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Such changes in emissions shall not be allowed if the change is a modification under any provision of Title I of the Act or the change would exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Executive Secretary shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements, and shall require the source to notify the Executive Secretary and the EPA in writing at least seven days before making the emission trade.

(i) The written notification shall state when the change will occur and shall describe the changes in emissions that will

result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield shall extend to terms and conditions that allow such increases and decreases in emissions.

(2) Off-permit changes. A Part 70 source may make changes that are not addressed or prohibited by the permit without a permit revision, unless such changes are subject to any requirements under Title IV of the Act or are modifications under any provision of Title I of the Act.

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) Sources must provide contemporaneous written notice to the Executive Secretary and EPA of each such change, except for changes that qualify as insignificant under R307-415-5e. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.

(c) The change shall not qualify for the permit shield.

(d) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(e) The off-permit provisions do not affect the requirement for a source to obtain an approval order under R307-401.

R307-415-7e. Permit Revision: Administrative Amendments.

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Executive Secretary;

(e) Incorporates into the operating permit the requirements from an approval order issued under R307-401, provided that the procedures for issuing the approval order were substantially equivalent to the permit issuance or modification procedures of R307-415-7a through 7i and R307-415-8, and compliance requirements are substantially equivalent to those contained in R307-415-6a through 6g;

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the Executive Secretary consistent with the following:

(a) The Executive Secretary shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that the Executive Secretary designates any such permit revisions as having been made pursuant to this paragraph. The Executive Secretary shall take final action on a request for a change in ownership or operational control of a source under (1)(d) above within 30 days of receipt of a request.

(b) The Executive Secretary shall submit a copy of the revised permit to EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The Executive Secretary shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for administrative permit amendments made pursuant to (1)(e) above which meet the relevant requirements of R307-415-6a through 6g, 7 and 8 for significant permit modifications.

R307-415-7f. Permit Revision: Modification.

The permit modification procedures described in R307-415-7f shall not affect the requirement that a source obtain an approval order under R307-401 before constructing or modifying a source of air pollution. A modification not subject to the requirements of R307-401 shall not require an approval order in addition to the permit modification as described in this section. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under R307-415-7e. Any permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(1) Minor permit modification procedures.

(a) Criteria. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement or require an approval order under R307-401;

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such term or condition would include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I or an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act, Early Reduction; and

(v) Are not modifications under any provision of Title I of the Act.

(b) Notwithstanding (1)(a)above and (2)(a) below, minor permit modification procedures may be used for permit

modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State Implementation Plan or an applicable requirement.

(c) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of R307-415-5c and shall include all of the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used;

(iv) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(d) EPA and affected State notification. Within five working days of receipt of a complete permit modification application, the Executive Secretary shall notify EPA and affected States of the requested permit modification. The Executive Secretary promptly shall send any notice required under R307-415-8(2)(b) to EPA.

(e) Timetable for issuance. The Executive Secretary may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Executive Secretary that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the Executive Secretary's receipt of an application under minor permit modification procedures or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later, the Executive Secretary shall:

(i) Issue the permit modification as proposed;

(ii) Deny the permit modification application;

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by R307-415-8(1).

(f) Source's ability to make change. A Part 70 source may make the change proposed in its minor permit modification application immediately after it files such application if the source has received an approval order under R307-401 or has met the approval order exemption requirements under R307-413-1 through 6. After the source makes the change allowed by the preceding sentence, and until the Executive Secretary takes any of the actions specified in (1)(e)(i) through (iii) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under R307-415-6f shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the Executive Secretary may modify the procedure outlined in (1) above to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

(i) That meet the criteria for minor permit modification procedures under (1)(a) above; and

(ii) That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in R307-415-3, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of R307-415-5c and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(ii) The source's suggested draft permit.

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under R307-415-7e(2)(a)(ii).

(v) Certification, consistent with R307-415-5d, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(vi) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(c) EPA and affected State notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (2)(a)(ii) above, whichever is earlier, the Executive Secretary shall notify EPA and affected States of the requested permit modifications. The Executive Secretary shall send any notice required under R307-415-8(2)(b)to EPA.

(d) Timetable for issuance. The provisions of (1)(e) above shall apply to modifications eligible for group processing, except that the Executive Secretary shall take one of the actions specified in (1)(e)(i) through (iv) above within 180 days of receipt of the application or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later.

(e) Source's ability to make change. The provisions of (1)(f) above shall apply to modifications eligible for group processing.

(f) Permit shield. The provisions of (1)(g) above shall also apply to modifications eligible for group processing.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do

not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with R307-415 that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of R307-415, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The Executive Secretary shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

R307-415-7g. Permit Revision: Reopening for Cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) New applicable requirements become applicable to a major Part 70 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the terms and conditions of the permit have been extended pursuant to R307-415-7c(3).

(b) Additional requirements, including excess emissions requirements, become applicable to an Title IV affected source under the Acid Rain Program. Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The Executive Secretary or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) EPA or the Executive Secretary determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(e) Additional applicable requirements are to become effective before the renewal date of the permit and are in conflict with existing permit conditions.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under (1) above shall not be initiated before a notice of such intent is provided to the Part 70 source by the Executive Secretary at least 30 days in advance of the date that the permit is to be reopened, except that the Executive Secretary may provide a shorter time period in the case of an emergency.

R307-415-7h. Permit Revision: Reopenings for Cause by EPA.

The Executive Secretary shall, within 90 days after receipt of notification that EPA finds that cause exists to terminate, modify or revoke and reissue a permit, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Executive Secretary may request a 90-day extension if a new or revised permit application is necessary or if the Executive Secretary determines that the permittee must submit additional information.

R307-415-7i. Public Participation.

The Executive Secretary shall provide for public notice, comment and an opportunity for a hearing on initial permit issuance, significant modifications, reopenings for cause, and renewals, including the following procedures:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the Executive Secretary, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the Part 70 source; the name and address of the permittee; the name and address of the Executive Secretary; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan or compliance and monitoring certification, and all other materials available to the Executive Secretary that are relevant to the permit decision; a brief description of the comment procedures; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

(3) The Executive Secretary shall provide such notice and opportunity for participation by affected States as is provided for by R307-415-8.

(4) Timing. The Executive Secretary shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The Executive Secretary shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

R307-415-8. Permit Review by EPA and Affected States.

(1) Transmission of information to EPA.

(a) The Executive Secretary shall provide to EPA a copy of each permit application, including any application for permit modification, each proposed permit, and each final operating permit, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category. The applicant may be required by the Executive Secretary to provide a copy of the permit application, including the compliance plan, directly to EPA. Upon agreement with EPA, the Executive Secretary may submit to EPA a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent

practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(b) The Executive Secretary shall keep for five years such records and submit to EPA such information as EPA may reasonably require to ascertain whether the Operating Permit Program complies with the requirements of the Act or of 40 CFR Part 70.

(2) Review by affected States.

(a) The Executive Secretary shall give notice of each draft permit to any affected State on or before the time that the Executive Secretary provides this notice to the public under R307-415-7i, except to the extent R307-415-7f(1) or (2) requires the timing to be different, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category.

(b) The Executive Secretary, as part of the submittal of the proposed permit to EPA, or as soon as possible after the submittal for minor permit modification procedures allowed under R307-415-7f(1) or (2), shall notify EPA and any affected State in writing of any refusal by the Executive Secretary to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the Executive Secretary's reasons for not accepting any such recommendation. The Executive Secretary is not required to accept recommendations that are not based on applicable requirements or the requirements of R307-415.

(3) EPA objection. If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the Executive Secretary shall not issue the permit. If the Executive Secretary fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act.

(4) Public petitions to EPA. If EPA does not object in writing under R307-415-8(3), any person may petition EPA under the provisions of 40 CFR 70.8(d) within 60 days after the expiration of EPA's 45-day review period to make such objection. If EPA objects to the permit as a result of a petition, the Executive Secretary shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Executive Secretary has issued a permit prior to receipt of an EPA objection under this paragraph, EPA may modify, terminate, or revoke such permit, consistent with the procedures in 40 CFR 70.7(g) except in unusual circumstances, and the Executive Secretary may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(5) Prohibition on default issuance. The Executive Secretary shall not issue an operating permit, including a permit renewal or modification, until affected States and EPA have had an opportunity to review the proposed permit as required under this Section.

R307-415-9. Fees for Operating Permits.

(1) Definitions. The following definitions apply only to R307-415-9.

(a) "Allowable emissions" are emissions based on the potential to emit stated by the Executive Secretary in an approval order, the State Implementation Plan or an operating permit.

(b) "Chargeable pollutant" means any "regulated air pollutant" except the following:

(i) carbon monoxide;

(ii) any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(iii) any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall

pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions.

(e) When a Part 70 source ceases operation, is redesignated as a non-Part 70 source, or is otherwise exempted from the emission fee requirements, the emission fee shall be prorated to the date that the source ceased operation or was reclassified. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be credited to the source's account, but will not be refunded. When that Part 70 source resumes operation or again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source resumed operation or was reclassified. The fee shall be based on the emission inventory during the last full year of operation for that Part 70 source minus any credit in the source's account.

(i) The emission fee for a Part 70 source that has resumed operation shall continue to be based on actual emissions reported for the last full calendar year of operation before the shutdown until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee or credit shall be calculated using allowable emissions.

(iii) Temporary shut downs of less than three months, or other normal shut downs due to seasonal work or regularly scheduled maintenance shall not qualify for an emission fee credit.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the Executive Secretary that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The Executive Secretary may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The Executive Secretary may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

R307-415-10. Administrative Procedures and Appeals.

(1) Designation of proceedings as formal or informal. The following proceedings and actions are designated to be conducted either formally or informally in accordance with the applicable provisions of Administrative Procedures Act, Title 63, Chapter 46b.

(a) Calculation and assessment of annual emission fees shall be processed informally using the procedures identified in R307-415-9.

(b) Permit issuance, modification, revocation, reissuance and renewal shall be processed informally using the procedures identified in R307-415-2 through R307-415-8.

(c) Appeal of a permit denial or a final permit, as that term is defined in R307-415-3, shall be conducted formally in accordance with Sections 63-46b-6 through 63-46b-13.

(d) A formal adjudicative proceeding may be converted to an informal proceeding or an informal adjudicative proceeding may be converted to a formal proceeding in accordance with Subsection 63-46b-4(3).

(2) Appeals.

(a) The applicant, or any person meeting the requirements of Section 63-46b-9, may appeal a final permit or permit denial by submitting to the Executive Secretary within 30 days of final permit issuance or denial:

(i) a Request for Agency Action in accordance with Section 63-46b-3, and,

(ii) where the person appealing a final permit is not the applicant, a Petition to Intervene in accordance with Section 63-46b-9.

(b) Where appeal of a final permit is based solely on grounds arising after the 30-day deadline for filing an appeal, such requests may be filed no later than 30 days after the new grounds arise.

(3) Judicial Review.

(a) After exhaustion of administrative procedures, judicial review of final agency action shall be in accordance with Sections 63-46b-14 through 63-46b-18, except as provided in (b) below.

(b) Judicial review of the Executive Secretary's failure to act on any operating permit application or renewal shall be in accordance with Section 19-2-109.1(11).

KEY: air pollution, environmental protection, operating permit*, emission fee*

April 6, 2000 19-2-109.1

Notice of Continuation March 1, 1999 19-2-104

R309. Environmental Quality, Drinking Water.
R309-302. Required Certification Rules for Backflow Technicians in the State of Utah.
R309-302-1. Objectives.

These certification rules are established in order to promote the use of trained, experienced professional personnel in protecting the public's health.

To establish standards for training, examining, and certification of those personnel involved with cross connection control program administration, testing, maintenance, and repair of backflow prevention assemblies, and the instruction of Backflow Technicians.

R309-302-2. Authority.

The Backflow Technician certification program is authorized by Utah Code Annotated, Section 26-12-5(4)(a).

R309-302-3. Extent of Coverage.

These rules shall apply to all personnel who will be:

a. directly involved with the administration or enforcement of any cross connection control program being administered by a drinking water system;

b. testing, maintaining and/or repairing any backflow prevention assembly;

c. instructors within the certification program, regardless of institution or program.

R309-302-4. Definitions.

Cross Connection Control Subcommittee - means the duly constituted advisory subcommittee appointed by the Safe Drinking Water Committee to advise the Safe Drinking Water Committee on Backflow Technician Certification and the Cross Connection Control Program of Utah. The Subcommittee will review the qualifications of applicants and make recommendations to the Safe Drinking Water Committee for certification of those individuals.

Bureau of Drinking Water/Sanitation - means that Bureau within the Department of Health which regulates public drinking water systems.

Cross Connection Control Program - means the program administered by the public water system in which cross connections are either eliminated or controlled.

Executive Secretary - means the Executive Secretary to the Utah Safe Drinking Water Committee.

Class - means the level of certification of Backflow Prevention Technician (Class I, II and III).

Public Drinking Water Supply - means a system, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least 15 service connections, or regularly serves an average of at least 25 individuals daily for at least 60 days out of the year.

Renewal Course - means a course of instruction, approved by the Subcommittee, which is a prerequisite to the renewal of a Backflow Technician's Certificate.

Secretary to the Subcommittee - means that individual appointed by the Executive Secretary to conduct the business of the Subcommittee.

Utah Safe Drinking Water Committee - means the duly constituted Committee appointed by the Governor, and responsible for the promulgation, interpretation and enforcement of public drinking water regulations within Utah.

R309-302-5. General Policies.

5.1 Certification Application: Any individual may apply for certification.

5.2 Certification Classes: The classes of certificates will be: Class I, Class II, and Class III.

5.2.1 Class I - Backflow Technician: This certificate will be issued to those individuals who are directly involved in administering a cross connection control program, who have demonstrated their knowledge and ability by passing the certification examination.

These individuals may NOT test, maintain or repair any backflow prevention assembly for record (except to insure proper testing techniques are being utilized within their jurisdiction).

These individuals may conduct plan/design reviews, hazard assessment investigations, compliance inspections, and enforce local laws, codes, (including the Utah Plumbing Code as it applies to cross connection control and backflow prevention), rules and regulations and policies within their jurisdictions, and offer technical assistance as needed.

5.2.2 Class II - Backflow Technician: This certificate will be issued to those individuals who meet the criteria for Class I and in addition having proven qualified and competent to test, maintain, and/or repair (see Section 5.3.3) backflow prevention assemblies (commercially as well as within their jurisdiction) by passing the practical examination.

5.2.3 Class III - Backflow Technician: This certificate will be issued to those individuals who meet the criteria for Class II and in addition have proven qualified and competent to instruct approved Backflow Technician Certification classes by participating in and passing an approved "Train The Trainers" course.

5.3 Certification Requirements: Those individuals seeking certification as a Backflow Technician must participate in an approved Technician's course of instruction and pass the examination required per class of certification.

5.3.1 All individuals who hold a valid Backflow Technician's license issued prior to the initiation of these rules will be issued a Class II - Backflow Technician certificate.

5.3.2 All individuals who instruct Backflow Technician training courses must hold a current Class III - Backflow Technician certificate.

5.3.3 The issuance of a Backflow Technician certificate (Class I, II or III) does NOT authorize that individual to install or replace any backflow prevention assembly. The installation replacement or repair of assemblies must be made by a licensed Journeyman Plumber (Title 58, Chapter 54, Utah Code Annotated), except when the Backflow Technician is an agent of the assembly owner.

R309-302-6. Examinations.

6.1 Exam Issuance: The examination recognized by the Subcommittee for certification will be issued through the Bureau of Drinking Water/Sanitation for both initial certification and renewals to those certified instructors teaching a course approved by the Cross Connection Control

Subcommittee.

If an individual fails an examination, he may file another application for reexamination on the next available test date.

6.1.1 Examinations (both written and practical) that are used to determine competency and ability will be approved by the Cross Connection Control Subcommittee prior to being issued.

6.1.2 Oral examinations may be administered, with approval from the Cross Connection Control Subcommittee, on a case-by-case basis.

6.2 Exam Scoring: Class I, Class II and Class III Technician's must successfully complete a written exam with a score of 70% or higher. Class II Technician's must also successfully demonstrate competence and ability in the practical examination, for the testing of the Pressure Atmospheric Vacuum Breaker, Double Check Valve Assembly, and Reduced Pressure Zone Principal Backflow Prevention Assemblies.

6.2.1 The practical examination will be conducted by a minimum of two Class III Technicians.

6.2.2 Each candidate must demonstrate competence and will be evaluated by all proctors and assessed a pass or fail grade in each of the following areas.

1) Properly identify backflow assembly
2) Properly identify test equipment needed
3) Properly connect test equipment
4) Test assembly
5) Identify inaccuracies
6) Properly diagnose assembly problems
7) Properly record test results

The candidate must receive a pass grade from each proctor in all areas listed above for each assembly tested in order to pass the practical examination.

6.2.3 An individual may apply for reexamination of either portion of the examination a maximum of two times. After a third failing grade, the individual must register for and complete another technician's course prior to the reexamination.

6.3 Class III Exam: Class III Technicians must participate in, and pass, a "train the trainers" course, approved by the Cross Connection Control Subcommittee, in addition to the successful completion of the Class II Technician's certification course.

R309-302-7. Certificates.

7.1 Certificate Issuance: For a certificate to be issued, the individual must complete a Technician's training course and pass with a minimum score of 70% the written examination. For Class II and III certificates, passing marks on the practical portion of the examination will also be required.

7.2 Certificate Renewal: The Backflow Technician's certificate will expire December 31, three years from the year of issuance.

Backflow Technician certificates will be issued by the Subcommittee's Secretary, by delegated authority from the Safe Drinking Water Committee.

7.2.1 The Backflow Technician's certificate may be renewed up to six months in advance of the expiration date.

7.2.2 To renew a Technician's certificate, the Technician must register and participate in a backflow prevention renewal course, and pass the renewal examination (minimum score of 70%) which will include a practical portion for Class II and III Certification.

7.2.3 To renew a Technician certificate that was issued prior to December 31, 1989, the Technician must register and attend a one day renewal course and pass a renewal written exam (minimum 70%) only. (There will not be a practical portion included in the renewal courses until 1992.)

7.2.4 Should the applicant fail the renewal written examination (minimum score of 70%), renewal of that existing license will not be allowed until a passing score is obtained. If the applicant fails to pass the test after three attempts, the applicant will be required to participate in an approved Backflow Technician's course before retaking the written and practical examinations. (Class I Technicians would only need to pass the written examination.)

7.3 Certification Revocation: The Subcommittee's Secretary is authorized to suspend or revoke a Backflow Technician's certification upon recommendation of the Subcommittee if, following a hearing of the Subcommittee, it is found that:

a. There is evidence that a disregard of public health and safety has occurred.

b. There is evidence that a violation of the Plumber's Law (Title 58 Chapter 54), that prohibits installation or replacement of assemblies, has occurred.

c. There is evidence that a misrepresentation or falsification of figures or reports concerning backflow prevention assembly or test results has occurred.

d. There is evidence that a failure to notify the proper authorities of a failing backflow prevention assembly within five days has occurred.

e. There is evidence that a failure to notify the proper authorities of a backflow incident for which the technician had personal knowledge has occurred.

f. There is evidence that a change of the design, material or operational characteristics of a backflow prevention assembly has occurred.

7.3.1 Suspension or revocation of a Technician's certificate will be in writing and will state the reasons for such actions and available appeal procedures. Disasters or "Acts of God", which could not be reasonably anticipated or prevented, will not be grounds for suspension or revocation actions.

7.4 Appeal Procedures: Any individual who receives a notice of suspension or revocation may, within 30 days of receipt, make a written request for an appeal to the Executive Secretary of the Safe Drinking Water Committee for a hearing before that Committee. The Committee shall follow the procedures for such a hearing as set forth in the Utah State Code.

R309-302-8. Fees.

8.1 Fees: The fees for certification will be submitted in accordance with Section 63-38-3.

All fees will be deposited in a special account to defray the costs of administering the Cross Connection Control and Certification programs.

8.2 Renewal Fees: The renewal fee for all classes of Technicians will be in accordance with Section 63-38-3.

8.3 All fees will be deposited in a special account to defray the cost of the program.

8.4 All fees are non-refundable.

R309-302-9. Training.

9.1 Training: Minimum training course curriculum, written tests and performance tests will be established by the Subcommittee and implemented by the Secretary of the Subcommittee for both the Technicians course and the renewal short course.

9.1.1 The length of the renewal course shall not exceed two days including the renewal examination (both written and "hands on").

R309-302-10. Cross Connection Control Subcommittee.

10.1 Appointment of Members: A Cross Connection Control Subcommittee will be appointed by the Safe Drinking Water Committee from nominations made by cooperating agencies.

10.2 Responsibility: The Subcommittee is charged with the responsibility of conducting all work necessary to promote the cross connection program as well as recommending qualified individuals for certification, and overseeing the maintenance of necessary records.

10.3 Representative Agencies: The Subcommittee shall consist of five members:

1. One member (nominated by the League of Cities and Towns) shall represent a community drinking water supply.

2. One member (nominated by the Utah Pipes Trades Education Program) shall represent the plumbing trade and must be a licensed Journeyman Plumber and Class II or III Backflow Technician.

3. One member (nominated by the Utah Mechanical Contractors Association) shall represent the mechanical trade contractors.

4. One member (nominated by the Safe Drinking Water Committee) shall represent the Safe Drinking Water Committee.

5. One member (nominated by the Rural Water Association of Utah) shall represent small water systems.

10.4 Term: Each member shall serve a two year term. At the initial meeting of the Subcommittee, lots will be drawn corresponding to two one and three two year terms. Thereafter, all Subcommittee members' terms will be on a staggered basis.

10.5 Nominations of Members: All nominations of Subcommittee members will be presented to the Safe Drinking Water Committee, which reserves the right to refuse any nomination.

10.6 Unexpired Term: An appointment to succeed a Subcommittee member who is unable to complete his full term shall be for the unexpired term only, and shall be nominated to, and appointed by, the Safe Drinking Water Committee in accordance with R309-302-10.1.

10.7 Quorum: At least three Subcommittee members shall be required to constitute a quorum to conduct the Subcommittee's business.

10.8 Officers: Each year the Subcommittee will elect officers as needed to conduct its business.

10.8.1 The Subcommittee shall meet at least once a year.

10.8.2 All actions taken by the Subcommittee will require a minimum of three affirmative votes.

R309-302-11. Secretary of the Subcommittee.

11.1 Appointment: The Executive Secretary of the Safe Drinking Water Committee will appoint, with the consent of the Subcommittee, a staff member to function as the Secretary to the Subcommittee. This Secretary will serve to coordinate the business of the Subcommittee and to bring issues before the Subcommittee.

11.2 Duties: The Secretary's duties will be to:

a. act as a liaison between the Subcommittee, certified Technicians, public water suppliers, and the public at large;

b. maintain records necessary to implement and enforce these rules;

c. notify sponsor agencies of Subcommittee nominations as needed;

d. coordinate and review all cross connection control programs, certification training and the certification of Backflow Technicians;

e. serve as a source of public information for Certified Technicians, water purveyors, and the public at large;

f. receive and process applications for certification;

g. investigate and verify all complaints against or concerning certified Backflow Prevention Technicians, and advise the Executive Secretary of the Safe Drinking Water Committee regarding any enforcement actions that are being recommended by the Subcommittee as outlined in Section R309-302-7.4;

h. develop and administer examinations;

i. review and correct examinations.

KEY: drinking water, environmental protection, administrative procedure

1990 26-12-5

Notice of Continuation April 10, 2000 63-46b-4

R309. Environmental Quality, Drinking Water.
R309-405. Compliance and Enforcement: Administrative Penalty.
R309-405-1. Authority.

Utah Code Annotated, Sections 19-4-104 and 19-4-109

R309-405-2. Purpose, Scope, and Applicability.

(1) This rule sets the criteria and procedures the Board will use in assessing penalties to public drinking water systems for violation of its rules.

(2) This guidance and ensuing criteria is intended to be flexible and liberally construed to achieve a fair, just, and equitable result with the intent of returning a public water system to compliance.

(3) This rule is applicable to all public drinking water systems.

R309-405-3. Limits on Authority and Liability.

Nothing in this rule should be construed to limit the Board's ability to take enforcement actions under Utah Code Annotated, Section 19-4-109.

R309-405-4. Assessment of a Penalty and Calculation of Settlement Amounts.

Where the Executive Secretary determines that a penalty may be appropriate, the Executive Secretary shall propose a penalty amount by sending a notice of agency action, under Title 63, chapter 46b of the Administrative Procedures Act, to the public water system. The notice of agency action shall provide that the public water system may submit comments and/or information on the proposed penalty to the Executive Secretary within 30 days. The criteria the Executive Secretary will use in establishing a proposed penalty amount shall be as follows:

(1) Major Violations: $3,000 to $5,000 per violation. This category includes violations with high potential for impact on drinking water users, major deviations from the requirements of the rules or Safe Drinking Water Act, intentional fraud, falsification of data, violations which result in a public water system being considered by the Environmental Protection Agency to be: "Significant Non-Compliers" (SNC), or violations that may have a substantial adverse effect on the regulatory program. This category also includes violations which result in an accumulation of 400 or more Improvement Priority System (IPS) points based on Section R309-150, the Water System Rating Criteria.

(2) Moderate Violations: $2,000 to $3,000 per violation. This category includes violations with a moderate potential for impact on drinking water users, moderate deviations from the requirements of the rules or Safe Drinking Water Act with some requirements implemented as intended, or violations that may have a significant notable adverse effect on the regulatory program. This category also includes violations which result in an accumulation of 300 or more IPS points based on Section R309-150, the Water System Rating Criteria.

(3) Minor Violations: Up to $2,000 per violation. This category includes violations with a minor potential for impact on drinking water users, slight deviations from the rules or Act with most of the requirements implemented, or violations that may have a minor adverse effect on the regulatory program. This category also includes violations which result in an accumulation of 200 or more IPS points based on Section R309-150, the Water System Rating Criteria.

The Executive Secretary will assess the penalty, if any, after reviewing information submitted by the public water system. The public water system may appeal the assessment of the penalty to the Board by requesting a formal hearing under the Utah Administrative Procedures Act within 30 days of the date of assessment of the penalty.

R309-405-5. Factors for Seeking or Negotiating Amount of Penalties.

The Executive Secretary, in assessing the penalty, may take into account the following factors:

(1) Economic benefit. The costs a person or organization may save by delaying or avoiding compliance with applicable laws or rules.

(2) Gravity of the violation. This component of the calculation shall be based on:

(a) The extent of deviation from the rules;

(b) The potential for harm to drinking water users, regardless of the extent of harm that actually occurred;

(c) The degree of cooperation or noncooperation and good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State;

(d) History of compliance or noncompliance. The penalty amount may be adjusted upward in consideration of previous violations and the degree of recidivism. Likewise, the penalty amount may be adjusted downward when it is shown that the violator has a good compliance record; and,

(e) Degree of willfulness or negligence. Factors to be considered include how much control the violator had over the violation and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew, or should have known, of the legal requirements which were violated, and degree of recalcitrance.

(3) The number of days of non compliance

(4) Public sensitivity. The actual impact of the violation(s) that occurred.

(5) Response and investigation costs incurred by the State and others.

(6) The possible deterrent effect of a penalty to prevent future violations.

R309-405-6. Satisfaction of Penalty Under Stipulated Penalty Agreement.

The Executive Secretary may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in Utah Code Annotated Section 19-4-109:

(1) Payment of the penalty may be extended based on a person or organization's inability to pay. This should be distinguished from an unwillingness to pay. In cases of financial hardship, the Executive Secretary may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(2) In circumstances where there is a demonstrated financial hardship, the Executive Secretary may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the Executive Secretary.

(3) In some cases, the Executive Secretary may allow the violator to satisfy the penalty by completing a Supplemental Environmental Project (SEP) approved by the Executive Secretary. The following criteria shall be used in determining the eligibility of such projects:

(a) The project must be in addition to all regulatory compliance obligations;

(b) The project must relate to some or all of the issues of the violation;

(c) The project must primarily benefit the drinking water users;

(d) The project must be defined, measurable and have a beginning and ending date;

(e) The project must be agreed to in writing between the public water system and the Executive Secretary;

(f) The project must not generate the public perception favoring violations of the laws and rules.

KEY: drinking water, environmental protection, administrative procedure, penalty
April 17, 2000 19-4-104
63-46b-4

R313. Environmental Quality, Radiation Control.
R313-34. Requirements for Irradiators.
R313-34-1. Purpose and Authority.

(1) Rule R313-34 prescribes requirements for the issuance of licenses authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(3) and 19-3-104(6).

(3) The requirements of Rule R313-34 are in addition to, and not in substitution for, the other requirements of these rules.

R313-34-2. Scope.

(1) Rule R313-34 shall apply to panoramic irradiators that have either dry or wet storage of the radioactive sealed sources; underwater irradiators in which both the source and the product being irradiated are under water; and irradiators whose dose rates exceed 5 grays (500 rads) per hour at 1 meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type.

(2) The requirements of Rule R313-34 shall not apply to self-contained dry-source-storage irradiators in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel, medical radiology or teletherapy, the irradiation of materials for nondestructive testing purposes, gauging, or open-field agricultural irradiations.

R313-34-3. Clarifications or Exemptions.

For purposes of Rule R313-34, 10 CFR 36, 2000 ed., is incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following 10 CFR sections: 36.1, 36.5, 36.8, 36.11, 36.17, 36.19(a), 36.91, and 36.93;

(2) The substitution of the following:

(a) Radiation Control Act for Atomic Energy Act of 1954;

(b) Utah Radiation Control Rules for the reference to NRC regulations and the Commission's regulations;

(c) The Executive Secretary or the Executive Secretary's for the Commission or the Commission's, and NRC in the following 10 CFR sections: 36.13, 36.13(f), 36.15, 36.19(b), 36.53(c), 36.69, and 36.81(a), 36.81(d) and 36.81(e); and

(d) In 10 CFR 36.51(a)(1), Rule R313-15 for NRC;

(3) Appendix B of 10 CFR Part 20 refers to the 2000 ed. of 10 CFR; and

(4) The substitution of Title R313 references for the following 10 CFR references:

(a) Section R313-12-51 for reference to 10 CFR 30.51;

(b) Rule R313-15 for the reference to 10 CFR 20;

(c) Subsection R313-15-501(3) for the reference to 10 CFR 20.1501(c);

(d) Section R313-15-902 for the reference to 10 CFR 20.1902;

(e) Rule R313-18 for the reference to 10 CFR 19;

(f) Section R313-19-41 for the reference to 10 CFR 30.41;

(g) Section R313-19-50 for the reference to 10 CFR 30.50;

(h) Section R313-22-33 for the reference to 10 CFR 30.33;

(i) Section R313-22-210 for the reference to 10 CFR 32.210;

(j) Section R313-22-35 for the reference to 10 CFR 30.35; and

(k) Rule R313-70 for the reference to 10 CFR 170.31.

KEY: irradiator, survey, radiation, radiation safety
March 10, 2000 19-3-104
Notice of Continuation April 3, 2000

R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-6. Emergency Medical Services Grants Program Rules.

R426-6-1. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide guidelines for the equitable distribution of grant funds specified under the Emergency Medical Services Grants Program.

R426-6-2. Definitions.

(1) County EMS Council or Committee means a group of persons recognized by the county commission as the legitimate entity within the county to formulate policy regarding the provision of EMS. It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.

(2) Multi-county EMS council or committee means a group of persons recognized by an association of counties as the legitimate entity within the association to formulate policy regarding the provision of EMS. It is recommended that the committee have the following representation: A physician and a nurse involved in the provision of emergency medical care; an ambulance service representative; a paramedic service representative, if available within county; a dispatcher representative; a local health department director or his designee and; a county commissioner or his designee; other members as locally appointed.

R426-6-3. Eligibility.

(1) Per capita grants are available only to:

(a) licensed and designated non-profit entities, including political subdivisions of local or state government; and

(b) licensed and designated providers that are the only primary emergency medical services for a service area.

(2) Competitive grants are available for use specifically related to the provision of emergency medical services.

(3) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period.

R426-6-4. Grant Implementation.

In accordance with Title 26, Chapter 8a, awards shall be implemented by grants between the Department and the grantee.

(1) Grant awards are effective on July 1 and must be used by June 30 of the following year.

(2) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

R426-6-5. Competitive Grant Process.

(1) The Grant Program Guidelines, outlining the review schedule, funding amounts, eligible expenditures, and awards schedule shall be established annually by the EMS Committee.

(2) The department may accept only complete applications which are submitted by the deadlines established by the EMS Committee.

(3) It is the intent of the EMS Committee that there be local EMS council or committee review and prioritization of grant applications. Therefore, copies of grant applications shall be provided by grant applicants to their respective county EMS councils or committees and the multi-county EMS councils or committees, where organized, for a period of at least 30 days for review and prioritization before consideration by the State Grants subcommittee. State reviews may not be conducted for grant proposals which have not been first submitted to the county or the multi-county EMS councils or committees.

(4) Agencies that are licensed or designated, whose EMS service area includes multiple local EMS Committee jurisdictions must submit a grant for each county that will be affected by the grant request. Each application must be provided to each respective county EMS council or committee for a period of at least 30 days for review and prioritization before consideration by the State Grants Subcommittee.

(5) The Grants Subcommittee shall review the competitive grant applications and forward its recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.

(6) Grant recipients shall provide matching funds in the amount of 50% of total approved expenditures or a greater amount as annually set forth in the Grant Guidelines.

(7) The Grants Subcommittee may recommend reducing or waiving the matching fund requirements where appropriate in order to respond to special or pressing local or state EMS problems.

(8) The Grants Subcommittee shall make recommendations based upon the following criteria:

(a) the impact on patient care;

(b) a description of the size and significant impediments of the geographic service area;

(c) the population demographics of the service area;

(d) the urgency of the need;

(e) call volume;

(f) the per capita grant allocated to each agency, and its relative benefit on the agency to provide EMS service;

(g) local county prioritization;

(h) a description of the agency; and

(i) percent of responses to non-residents of the service area.

(9) Applications requesting grant award extensions past June 30, must be made to the department by May 30 of the grant year. Requests made after that time will not be accepted. Grants extensions may only be given for unforeseen circumstances.

R426-6-6. Per Capita Grant Process.

(1) Agency applicants shall verify agency personnel rosters as part of the grant application process.

(2) The department shall determine the amounts of the per capita grants by prorating available funds on a per capita basis by county.

(3) The Department shall allocate funds to licensed EMS providers, designated dispatch agencies and designated first

response units by using the following point totals for their personnel: certified Dispatchers = 1; certified Basic EMTs and EMT-IVs = 2; certified Intermediate EMTs = 3; and certified Paramedics = 4. The number of certified personnel is based upon the personnel rosters of each licensed EMS provider, designated dispatch agency and designated first response unit as of January 1 immediately prior to the grant year, which begins July 1.

(4) Certified personnel will receive per capita funding for only one agency per county.

(5) Agencies that cover multiple counties will receive points for their personnel from the county where the certified person lives.

(6) No matching funds are required for per capita grants.

(7) Grant awards are effective on July 1 and must be used by June 30 of the following year. No extensions will be given.

(8) Per capita funds may be used as matching funds for competitive grants.

R426-6-7. High School Training Program Grant.

(1) The department shall provide a grant by contract with a single non-profit entity for the purpose of teaching the "What To Do Until the Ambulance Arrives" program or a similar program to Utah high school students. Any change to the curriculum of the program must be approved by the Department and the Utah State Board of Education. These programs are limited to Utah high schools for Utah high school students.

(2) The contract will be effective from July 1 through June 30. Contract awards may not be extended or amended.

R426-6-8. Interim or Emergency Grant Awards.

(1) The Grants Review Subcommittee may recommend interim or emergency grants if all the following are met:

(a) Grant funds are available;

(b) The applicant clearly demonstrates the need;

(c) the application was not rejected by the Grants Review Subcommittee during the current grant cycle; and

(d) Delay of funding to the next scheduled grant cycle would impair the agency's ability to provide EMS care.

(2) Applicants for interim or emergency grants shall:

(a) submit an interim/emergency grant application, following the same format as annual grant applications; and

(b) submit the interim/emergency grant application to the Department at least 30 days prior to the EMS Committee meeting at which the grant application will be reviewed.

(3) The Grants Review Subcommittee shall review the interim/emergency grant application and forward recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Review Subcommittee recommendations and forward to the Department.

KEY: emergency medical services
April 30, 2000 26-8a
Notice of Continuation December 2, 1997

R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-270. Assisted Living Facilities.
R432-270-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-270-2. Purpose.

(1) This rule establishes the operational standards for assisted living facilities.

(2) Assisted living as provided in 26-21-2(3) means:

(a) A Type I assisted living facility is a residential facility that provides assistance with activities of daily living and social care to two or more residents who are capable of achieving mobility sufficient to exit the facility without the assistance of another person;

(b) A Type II assisted living facility is a residential facility with a home-like setting that provides an array of coordinated supportive personal and health care services, available 24 hours per day, to residents who have been assessed.

(c) Each resident in a Type I or Type II assisted living facility must have a service plan based on the assessment, which may include:

(i) specified services of intermittent nursing care

(ii) administration of medication; and

(iii) support services promoting residents' independence and self-sufficiency.

(3) Assisted living is intended to enable persons experiencing functional impairments to receive 24-hour personal and health-related services in a place of residence with sufficient structure to meet care needs in a safe manner.

(4) Assisted living services shall be individualized to:

(a) maintain each individual's capabilities and facilitate using those abilities;

(b) create options to enable individuals to exercise control over their lives,

(c) provide supports which validate the self-worth of each individual by showing courtesy and respect for the individual's rights;

(d) maintain areas or spaces which provide privacy; and

(e) recognize each individual's needs and preferences and be flexible in service delivery to respond to those needs and preferences.

(5) Assisted living is intended to allow residents to choose how they will balance risk and quality of life.

(6) Type II assisted living facilities shall provide substantial assistance with activities of daily living, in response to a medical condition, above the level of verbal prompting, supervision, or coordination.

(7) Type II assisted living facilities shall provide each resident with a separate living unit. Two residents may share a unit upon written request of both of the residents.

(8) Type II assisted living is intended to enable residents, to the degree possible, to age in place.

R432-270-3. Definitions.

(1) The terms used in these rules are defined in R432-1-3.

(2) In addition:

(a) "Assistance with the activities of daily living and independent activities of daily living" means prompting and assisting residents with the following:

(i) personal grooming and dressing;

(ii) oral hygiene and denture care;

(iii) toileting and toilet hygiene;

(iv) eating during mealtime;

(v) encouraging and supporting residents to be independent or maintain independence if they use assistive devices (crutches, braces, walkers, wheelchairs) or prosthetic devices (glasses and hearing aids);

(vi) housekeeping;

(vii) self-administration of medication;

(viii) encouraging the resident to maintain his independence and sense of self-direction;

(ix) administering emergency first aid; and

(x) taking and recording oral temperatures.

(b) "Dependent" means a person who meets one or all of the following criteria:

(i) requires inpatient hospital or 24-hour continual nursing care that will last longer than 15 calendar days after the day on which the nursing care begins;

(ii) is unable to evacuate from the facility without the physical assistance of two persons.

(c) "Home-like" as used in statute and this rule means a place of residence which creates an atmosphere supportive of the resident's preferred lifestyle. Home-like is also supported by the use of residential building materials and furnishings.

(d) "Licensed health care professional" means a registered nurse, physician assistant, advanced nurse practitioner, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(e) "Semi-independent" means a person who is:

(i) physically disabled but able to direct his own care; or

(ii) cognitively impaired or physically disabled but able to evacuate from the facility or to a zone or area of safety with the physical assistance of one person.

(f) "Service Plan" means a written plan for services which meets the requirements of R432-270-14.

(g) "Services" means activities which help the residents develop skills to increase or maintain their level of psycho-social and physical functioning, or which assist them in activities of daily living.

(h) "Social care" means:

(i) providing opportunities for social interaction in the facility and in the community; and

(ii) providing services to promote independence and a sense of self-direction.

(i) "Unit" means an individual living space, including living and sleeping space, bathroom, and optional kitchen area.

R432-270-4. Licensure.

(1) Assisted living facilities may be licensed as large, small or limited capacity facilities.

(2) A large assisted living facility houses 17 or more residents.

(3) A small assisted living facility houses six to 16 residents.

(4) A limited capacity assisted living facility houses two to five residents.

R432-270-5. Licensee.

(1) The licensee must:

(a) ensure compliance with all federal, state, and local laws;

(b) assume responsibility for the overall organization, management, operation, and control of the facility;

(c) establish policies and procedures for the welfare of residents, the protection of their rights, and the general operation of the facility;

(d) implement a policy which ensures that the facility does not discriminate on the basis of race, color, sex, religion, ancestry, or national origin in accordance with state and federal law;

(e) secure and update contracts for required services not provided directly by the facility;

(f) respond to requests for reports from the Department; and

(g) appoint, in writing, a qualified administrator who shall assume full responsibility for the day-to-day operation and management of the facility. The licensee and administrator may be the same person.

(2) The licensee shall implement a quality assurance program to include a Quality Assurance Committee. The committee must:

(a) consist of at least the facility administrator and a health care professional, and

(b) meet at least quarterly to identify and act on quality issues.

(3) If the licensee is a corporation or an association, it shall maintain an active and functioning governing body to fulfill licensee duties and to ensure accountability.

R432-270-6. Administrator Qualifications.

(1) The administrator shall have the following qualifications:

(a) be 21 years of age or older;

(b) have knowledge of applicable laws and rules;

(c) have the ability to deliver, or direct the delivery of, appropriate care to residents;

(d) be of good moral character;

(e) complete the background criminal clearance defined in R432-35; and

(f) for all Type II facilities, complete a Department approved national certification program.

(2) In addition to R432-270-6(1) the administrator of a Type I facility shall have an associate degree or two years experience in a health care facility.

(3) In addition to R432-270-6(1) the administrator of a Type II small or limited-capacity assisted living facility shall have one or more of the following:

(a) an associate degree in a health care field;

(b) two years or more management experience in a health care field; or

(c) one year's experience in a health care field as a licensed health care professional.

(4) In addition to R432-270-6(1) the administrator of a Type II large assisted living facility must have one or more of the following:

(a) a State of Utah health facility administrator license;

(b) a bachelor's degree in a health care field, to include management training or one or more years of management experience;

(c) a bachelor's degree in any field, to include management training or one or more years of management experience and one year or more experience in a health care field; or

(d) an associates degree and four years or more management experience in a health care field.

R432-270-7. Administrator Duties.

(1) The administrator must:

(a) be on the premises a sufficient number of hours in the business day, and at other times as necessary, to manage and administer the facility;

(b) designate, in writing, a competent employee, 21 years of age or older, to act as administrator when the administrator is unavailable for immediate contact. It is not the intent of this subsection to permit a de facto administrator to replace the designated administrator.

(2) The administrator is responsible for the following:

(a) recruit, employ, and train the number of licensed and unlicensed staff needed to provide services;

(b) verify all required licenses and permits of staff and consultants at the time of hire or the effective date of contract;

(c) maintain facility staffing records for the preceding 12 months;

(d) admit and retain only those residents who meet admissions criteria and whose needs can be met by the facility;

(e) review at least quarterly every injury, accident, and incident to a resident or employee and document appropriate corrective action;

(f) maintain a log indicating any significant change in a resident's condition and the facility's action or response;

(g) complete an investigation whenever there is reason to believe that a resident has been subject to abuse, neglect, or exploitation;

(h) report all suspected abuse, neglect, or exploitation in accordance with Section 62A-3-302, and document appropriate action if the alleged violation is verified.

(i) notify the resident's responsible person and physician of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the facility's license;

(j) conduct and document regular inspections of the facility to ensure it is safe from potential hazards;

(k) complete, submit, and file all records and reports required by the Department;

(l) participate in a quality assurance program; and

(m) secure and update contracts for required professional and other services not provided directly by the facility.

(5) The administrator's responsibilities shall be included in a written and signed job description on file in the facility.

R432-270-8. Personnel.

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by the residents' assessment and service plans. Additional staff shall be employed as necessary to perform

office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents in a Type I facility shall be at least 18 years of age and shall have related experience in the job assigned or receive on the job training.

(4) Personnel who provide personal care to residents in a Type II facility shall be certified nurse aides or complete a state certified nurse aide program after four months of the date of hire.

(5) Personnel shall be licensed, certified, or registered in accordance with applicable state laws.

(6) The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

(7) Facility policies and procedures must be available to personnel at all times.

(8) All personnel must receive documented orientation to the facility and the job for which they are hired. Orientation shall include the following:

(a) job description;

(b) ethics, confidentiality, and residents' rights;

(c) fire and disaster plan;

(d) policy and procedures; and

(e) reporting responsibility for abuse, neglect and exploitation.

(9) Each employee shall receive documented in-service training. The training shall be tailored to include all of the following subjects that are relevant to the employee's job responsibilities:

(a) principles of good nutrition, menu planning, food preparation, and storage;

(b) principles of good housekeeping and sanitation;

(c) principles of providing personal and social care;

(d) proper procedures in assisting residents with medications;

(e) recognizing early signs of illness and determining when there is a need for professional help;

(f) accident prevention, including safe bath and shower water temperatures;

(g) communication skills which enhance resident dignity;

(h) first aid;

(i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and

(j) special needs of the Dementia/Alzheimer's resident.

(10) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone. (11) The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.

(12) The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.

(a) A health inventory shall obtain at least the employee's history of the following:

(i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.

(b) The facility shall develop employee health screening and immunization components of the personnel health program.

(c) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R388-804, Tuberculosis Control Rule.

(i) Skin testing must be conducted on each employee within two weeks of hire and after suspected exposure to a resident with active tuberculosis.

(ii) All employees with known positive reaction to skin tests are exempt from skin testing.

(d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with R386-702-2.

(e) The facility shall comply with the Occupational Safety and Health Administration's Bloodborne Pathogen Standard.

R432-270-9. Volunteers.

(1) Volunteers may be used in the daily activities of the facility, but may not be included in the facility's employee staffing plan.

(2) Volunteers must be supervised by facility staff.

(3) Volunteers must be familiar with the facility's policies and procedures and with residents' rights.

R432-270-10. Residents' Rights.

(1) Assisted living facilities shall develop a written resident's rights statement based on this section.

(2) The administrator or designee shall give the resident a written description of the resident's legal rights upon admission, including the following:

(a) a description of the manner of protecting personal funds, in accordance with Section R432-270-20; and

(b) a statement that the resident may file a complaint with the state long term care ombudsman and any other advocacy group concerning resident abuse, neglect, or misappropriation of resident property in the facility.

(3) The administrator or designee shall notify the resident or the resident's responsible person at the time of admission, in writing and in a language and manner that the resident or the resident's responsible person understands, of the resident's rights and of all rules governing resident conduct and responsibilities during the stay in the facility.

(4) The administrator or designee must promptly notify in writing the resident or the resident's responsible person when there is a change in resident rights under state law.

(5) Resident rights include the following:

(a) the right to be treated with respect, consideration, fairness, and full recognition of personal dignity and individuality;

(b) the right to be transferred, discharged, or evicted by the facility only in accordance with the terms of the signed admission agreement;

(c) the right to be free of mental and physical abuse, and chemical and physical restraints;

(d) the right to refuse to perform work for the facility;

(e) the right to perform work for the facility if the facility consents and if:

(i) the facility has documented the resident's need or desire for work in the service plan,

(ii) the resident agrees to the work arrangement described in the service plan,

(iii) the service plan specifies the nature of the work performed and whether the services are voluntary or paid, and

(iv) compensation for paid services is at or above the prevailing rate for similar work in the surrounding community;

(f) the right to privacy during visits with family, friends, clergy, social workers, ombudsmen, resident groups, and advocacy representatives;

(g) the right to share a unit with a spouse if both spouses consent, and if both spouses are facility residents;

(h) the right to privacy when receiving personal care or services;

(i) the right to keep personal possessions and clothing as space permits;

(j) the right to participate in religious and social activities of the resident's choice;

(k) the right to interact with members of the community both inside and outside the facility;

(l) the right to send and receive mail unopened;

(m) the right to have access to telephones to make and receive private calls;

(n) the right to arrange for medical and personal care;

(o) the right to have a family member or responsible person informed by the facility of significant changes in the resident's cognitive, medical, physical, or social condition or needs;

(p) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night. This right does not prohibit the establishment of house rules such as locking doors at night for the protection of residents;

(q) the right to be informed of complaint or grievance procedures and to voice grievances and recommend changes in policies and services to facility staff or outside representatives without restraint, discrimination, or reprisal;

(r) the right to be encouraged and assisted throughout the period of a stay to exercise these rights as a resident and as a citizen;

(s) the right to manage and control personal funds, or to be given an accounting of personal funds entrusted to the facility, as provided in R432-270-20 concerning management of resident funds;

(t) the right, upon oral or written request, to access within 24 hours all records pertaining to the resident, including clinical records;

(u) the right, two working days after the day of the resident's oral or written request, to purchase at a cost not to exceed the community standard photocopies of the resident's records or any portion thereof;

(v) the right to personal privacy and confidentiality of personal and clinical records;

(w) the right to be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(x) the right to be fully informed in a language and in a manner the resident understands of the resident's health status and health rights, including the following:

(i) medical condition;

(ii) the right to refuse treatment;

(iii) the right to formulate an advance directive in accordance with UCA Section 75-2-1101; and

(iv) the right to refuse to participate in experimental research.

(6) The following items must be posted in a public area of the facility that is easily accessible by residents the following:

(a) the long term care ombudsmen's notification poster;

(b) information on Utah protection and advocacy systems; and

(c) a copy of the resident's rights.

(7) The facility shall have available in a public area of the facility the results of the current survey of the facility and any plans of correction.

(8) A resident may organize and participate in resident groups in the facility, and a resident's family may meet in the facility with the families of other residents.

(a) The facility shall provide private space for resident groups or family groups.

(b) Facility personnel or visitors may attend resident group or family group meetings only at the group's invitation.

(c) The administrator shall designate an employee to provide assistance and to respond to written requests that result from group meetings.

R432-270-11. Admissions.

(1) The facility shall have written admission, retention, and transfer policies that are available to the public upon request.

(2) Before accepting a resident, the facility must obtain sufficient information about the person's ability to function in the facility through the following:

(a) an interview with the resident and the resident's responsible person; and

(b) the completion of the resident assessment.

(3) If the Department determines during inspection or interview that the facility knowingly and willfully admits or retains residents who do not meet license criteria, then the Department may, for a time period specified, require that resident assessments be conducted by an individual who is independent from the facility.

(4) The facility shall accept and retain only residents who meet the following criteria:

(a) Residents admitted to a Type I facility shall meet the following criteria before being admitted:

(i) be ambulatory or mobile and be capable of taking life saving action in an emergency;

(ii) have stable health;

(iii) require no assistance or only limited assistance from facility staff in the activities of daily living; and

(iv) require and receive regular or intermittent care or treatment in the facility from a licensed health professional either through contract or by the facility, if permitted by facility policy.

(b) Residents admitted to a Type II facility may be independent and semi-independent, but shall not be dependent.

(5) Type I and Type II assisted living facilities shall not admit or retain a person who:

(a) manifests behavior that is suicidal, sexually or socially inappropriate, assaultive, or poses a danger to self or others; or

(b) has active tuberculosis or other chronic communicable diseases that cannot be treated in the facility or on an outpatient basis; or may be transmitted to other residents or guests through the normal course of activities; or

(c) requires inpatient hospital or long-term nursing care;

(6) In addition to the conditions outlined in R432-270-11(5), a Type I facility shall not accept or retain a person who:

(a) requires significant assistance during night sleeping hours;

(b) is unable to take life saving action in an emergency without the assistance of another person; or

(c) requires close supervision and a controlled environment.

(7) The prospective resident or the prospective resident's responsible person must sign a written admission agreement prior to admission. The admission agreement shall be kept on file by the facility and shall specify at least the following:

(a) room and board charges and charges for basic and optional services;

(b) provision for a 30-day notice prior to any change in established charges;

(c) admission, retention, transfer, discharge, and eviction policies;

(d) conditions under which the agreement may be terminated;

(e) the name of the responsible party;

(f) notice that the Department has the authority to examine resident records to determine compliance with licensing requirements; and

(g) refund provisions that address the following:

(i) thirty-day notices for transfer or discharge given by the facility or by the resident,

(ii) emergency transfers or discharges,

(iii) transfers or discharges without notice, and

(iv) death of a resident.

R432-270-12. Transfer or Discharge Requirements.

(1) A resident may be discharged, transferred, or evicted for one or more of the following reasons:

(a) The facility is no longer able to meet the resident's needs.

(b) The resident fails to pay for services as required by the admission agreement.

(c) The resident fails to comply with written policies or rules of the facility.

(d) The resident wishes to transfer.

(e) The facility ceases to operate.

(2) Prior to transferring or discharging a resident, the facility shall serve a transfer or discharge notice upon the resident and the resident's responsible person.

(a) The notice shall be either hand-delivered or sent by certified mail.

(b) The notice shall be made at least 30 days before the day on which the facility plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:

(i) the safety or health of persons in the facility is endangered; or

(ii) an immediate transfer or discharge is required by the resident's urgent medical needs.

(3) The notice of transfer or discharge shall:

(a) be in writing with a copy placed in the resident file;

(b) be phrased in a manner and in a language the resident can understand;

(c) detail the reasons for transfer or discharge;

(d) state the effective date of transfer or discharge;

(e) state the location to which the resident will be transferred or discharged;

(f) state that the resident may request a conference to discuss the transfer or discharge; and

(g) contain the following information:

(i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;

(ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(4) The facility shall provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.

(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the facility shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.

(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.

(b) Participants in the conference shall include the facility representatives, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

R432-270-13. Resident Assessment.

(1) Each person admitted to an assisted living facility shall have a personal physician or a licensed practitioner prior to admission.

(2) A signed and dated resident assessment shall be completed on each resident prior to admission and at least annually thereafter.

(3) In a Type I facility, the resident assessment shall be completed and signed by a physician, an advanced practice registered nurse, physician assistant, or a registered nurse.

(4) In a Type II facility, the resident assessment shall be completed and signed by the facility's registered nurse.

(5) The resident assessment shall include a signed statement, by the health professional completing the resident assessment, that the resident is able to function in either a Type I or Type II assisted living facility.

(6) The resident assessment shall document the resident's cognitive, physical, medical, and social conditions.

(7) The facility shall use a resident assessment form that is approved and reviewed by the Department to document the resident assessments.

(8) The facility shall revise and update each resident's assessment when there is a significant change in the resident's cognitive, medical, physical, or social condition.

(9) A Type I facility shall conduct a semi annual resident review in each 12-month period.

(a) The semi-annual review shall document the assistance required by the resident in the activities of daily living.

(b) The semi annual resident review may be completed and signed by facility staff other than a licensed health care professional.

(10) A Type II facility shall conduct a semi-annual resident assessment review.

(a) The semi-annual resident assessment review shall document changes in a resident's cognitive, medical, physical, and social conditions.

(b) A registered nurse must complete and sign the resident assessment.

R432-270-14. Service Plan.

(1) Each resident must have an individualized service plan that is consistent with the resident's unique cognitive, medical, physical, and social needs, and is developed within seven calendar days of the day the facility admits the resident. The facility shall periodically revise the service plan as needed.

(2) The facility shall use the resident assessment to develop, review, and revise the service plan for each resident.

(3) The service plan must be prepared by a service coordinator who is an employee of the assisted living facility. The resident or the resident's responsible person shall actively participate with the service coordinator in developing the service plan.

(4) The service plan shall include a written description of the following:

(a) what services are provided;

(b) who will provide the services, including the resident's significant others who may participate in the delivery of services;

(c) how the services are provided;

(d) the frequency of services; and

(e) changes in services and reasons for those changes.

R432-270-15. Nursing Services.

(1) The facility must develop written policies and procedures defining the level of nursing services provided by the facility.

(a) A Type II assisted living facility shall employ or contract with a registered nurse to provide or supervise nursing services to include:

(i) a nursing assessment on each resident;

(ii) general health monitoring on each resident; and

(iii) routine nursing tasks, including those that may be delegated to unlicensed assistive personnel in accordance with the Utah Nurse Practice Act R156-31-603.

(b) A Type I assisted living facility may provide nursing care according to facility policy. If a Type I assisted living facility chooses to provide nursing services, the nursing services must be provided in accordance with R432-270-15(1)(a)(i) thru (iii).

(2) Type I and Type II assisted living facilities shall not provide skilled nursing care, but must assist the resident in obtaining required services.

(3) To determine whether a nursing service is skilled, the following criteria shall apply:

(a) The complexity or specialized nature of the prescribed services can be safely or effectively performed only by, or under the close supervision of licensed health care professional personnel.

(b) Care is needed to prevent, to the extent possible, deterioration of a condition or to sustain current capacities of a resident.

R432-270-16. Arrangements for Medical or Dental Care.

(1) The facility shall assist residents in arranging access for ancillary services for medically related care including physician, dentist, pharmacist, therapy, podiatry, hospice, home health, and other services necessary to support the resident.

(2) The facility shall arrange for care through one or more of the following methods:

(a) notifying the resident's responsible person;

(b) arranging for transportation to and from the practitioner's office; or

(c) arrange for a home visit by a health care professional.

(3) The facility must notify a physician or other health care professional when the resident requires immediate medical attention.

R432-270-17. Activity Program.

(1) Residents shall be encouraged to maintain and develop their fullest potential for independent living through participation in activity and recreational programs.

(2) The facility shall provide opportunities for the following:

(a) socialization activities;

(b) independent living activities to foster and maintain independent functioning;

(c) physical activities; and

(d) community activities to promote resident participation in activities away from the facility.

(3) The administrator shall designate an activity coordinator to direct the facility's activity program. The activity coordinator's duties include the following:

(a) coordinate all recreational activities, including volunteer and auxiliary activities;

(b) plan, organize, and conduct the residents' activity program with resident participation; and

(c) develop and post monthly activity calendars, including information on community activities, based on residents' needs

and interests.

(3) The facility shall provide sufficient equipment, supplies, and indoor and outdoor space to meet the recreational needs and interests of residents.

(4) The facility shall provide storage for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-270-18. Medication Administration.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided shall be documented on the resident's service plan.

(2) The resident's medication program shall include one or all of the following:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, a resident shall keep his medication in a locked container in the unit.

(b) Facility staff may assist residents who self-medicate by:

(i) reminding the resident to take the medication;

(ii) opening medication containers;

(iii) reading the instructions on container labels;

(iv) checking the dosage against the label of the container;

(v) reassuring the resident that the dosage is correct;

(vi) observing a resident take the medication; and

(vii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a significant other may set up medications in a package which identifies the medication and time to administer. If a family member or significant other assists with medication administration, they shall sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document that the medication has been administered. The facility staff may assist the resident to self medicate by:

(i) reminding residents to take medications; and

(ii) opening the container at the resident's request.

(d) Unlicensed assistive personnel may assist with medication administration under the supervision of the facility's registered nurse.

(i) The facility's registered nurse may delegate the task of assisting with medication administration to unlicensed assistive personnel in accordance with the Nurse Practice Act R156-31-603.

(ii) The registered nurse who delegates the assisting with medication administration must verify and evaluate the practitioner's orders, perform a nursing assessment, and determine whether unlicensed assistive personnel can safely perform the assisting with administration of medications.

(iii) The medications must be administered according to a plan of care developed by the registered nurse.

(iv) The registered nurse shall provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration.

(v) The delegating nurse or another registered nurse shall be readily available either in person or by telecommunication.

(e) The resident may have the facility's licensed nurse administer medications.

(i) The service plan shall document instructions for medication administration.

(ii) All medications shall be prescribed in writing for the resident by the resident's licensed practitioner.

(3) The facility must review all resident medications at least every six months unless the resident has been assessed to safely self-administer medications.

(a) Medication records shall include the following:

(i) the resident's name;

(ii) the name of the prescribing practitioner;

(iii) the name of the medication, including prescribed dosage;

(iv) the times and dates administered;

(v) the method of administration;

(vi) signatures of personnel administering the medication; and

(vii) the review date.

(b) Any change in the dosage or schedule of medication administration shall be made by the resident's licensed practitioner and be documented in the medication record. All personnel shall be notified of the medication change.

(c) The facility shall keep on file a list of possible reactions and precautions to any medications that facility staff assist the resident to administer.

(6) The licensed practitioner shall be notified when medications errors occur.

(7) Medications shall be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, the resident shall have timely access to the medication.

(b) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees F.

(c) The administration, storage, and handling of oxygen must comply with the requirements of NFPA 99 which is adopted and incorporated by reference.

(8) The facility shall develop and implement a policy for disposing of unused, outdated, or recalled medications.

(a) The facility shall return a resident's medication to the resident or to the resident's responsible person upon discharge.

(b) The administrator shall document the return to the resident or the resident's responsible person of medication stored in a central storage.

R432-270-19. Management of Resident Funds.

(1) Residents have the right to manage and control their financial affairs. The facility may not require residents to deposit their personal funds or valuables with the facility.

(2) The facility need not handle residents' cash resources or valuables. However, upon written authorization by the resident or the resident's responsible person, the facility may hold, safeguard, manage, and account for the resident's personal funds or valuables deposited with the facility, in accordance

with the following:

(a) The licensee shall establish and maintain on the residents' behalf a system that assures a full, complete, and separate accounting according to generally accepted accounting principles of each resident's personal funds entrusted to the facility. The system shall:

(i) preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident, and preclude facility personnel from using residents' monies or valuables as their own;

(ii) separate residents' monies and valuables intact and free from any liability that the licensee incurs in the use of its own or the facility's funds and valuables;

(iii) maintain a separate account for resident funds for each facility and not commingle such funds with resident funds from another facility;

(iv) for records of residents' monies which are maintained as a drawing account, include a control account for all receipts and expenditures and an account for each resident and supporting receipts filed in chronological order;

(v) keep each account with columns for debits, credits, and balance; and

(vi) include a copy of the receipt that it furnished to the residents for funds received and other valuables entrusted to the licensee for safekeeping.

(b) The facility shall make individual financial records available on request through quarterly statements to the resident or the resident's legal representative.

(c) The facility shall purchase a surety bond or otherwise provide assurance satisfactory to the Department that all resident personal funds deposited with the facility are secure.

(d) The facility shall deposit, within five days of receipt, all resident monies that are in excess of $150 in an interest-bearing bank account, that is separate from any of the facility's operating accounts, in a local financial institution.

(i) Interest earned on a resident's bank account shall be credited to the resident's account.

(ii) In pooled accounts, there shall be a separate accounting for each resident's share, including interest.

(e) The facility shall maintain a resident's personal funds that do not exceed $150 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

(f) Upon discharge of a resident with funds or valuables deposited with the facility, the facility shall that day convey the resident's funds, and a final accounting of those funds, to the resident or the resident's legal representative. Funds and valuables kept in an interest-bearing account shall be accounted for and made available within three working days.

(g) Within 30 days following the death of a resident, except in a medical examiner case, the facility shall convey the resident's valuables and funds entrusted to the facility, and a final accounting of those funds, to the individual administering the resident's estate.

R432-270-20. Facility Records.

(1) The facility must maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.

(2) Records shall be protected against access by unauthorized individuals.

(3) The facility shall maintain personnel records for each employee and shall retain such records for at least three years following termination of employment. Personnel records must include the following:

(a) employee application;

(b) date of employment;

(c) termination date;

(d) reason for leaving;

(e) documentation of CPR and first aid training;

(f) health inventory;

(g) food handlers permits;

(h) TB skin test documentation; and

(i) documentation of criminal background check.

(4) The facility must maintain in the facility a separate record for each resident that includes the following:

(a) the resident's name, date of birth, and last address;

(b) the name, address, and telephone number of the person who administers and obtains medications, if this person is not facility staff;

(c) the name, address, and telephone number of the individual to be notified in case of accident or death;

(d) the name, address, and telephone number of a physician and dentist to be called in an emergency;

(e) the admission agreement;

(f) the resident assessment; and

(g) the resident service plan.

(5) Resident records must be retained for at least three years following discharge.

R432-270-21. Food Services.

(1) Facilities must have the capability to provide three meals a day, seven days a week, to all residents, plus snacks.

(a) The facility shall maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.

(b) There shall be no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.

(c) The facility food service must comply with the following:

(i) All food shall be of good quality and shall be prepared by methods that conserve nutritive value, flavor, and appearance.

(ii) The facility shall ensure food is palatable, attractively served, and delivered to the resident at the appropriate temperature.

(iii) Powdered milk may only be used as a beverage, upon the resident's request, but may be used in cooking and baking.

(2) The facility shall provide adaptive eating equipment and utensils for residents as needed.

(3) A different menu shall be planned and followed for each day of the week.

(a) All menus must be approved and signed by a certified dietitian.

(b) Cycle menus shall cover a minimum of three weeks.

(c) The current week's menu shall be posted for residents' viewing.

(d) Substitutions to the menu that are actually served to the

residents shall be recorded and retained for three months for review by the Department.

(4) Meals shall be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(5) Residents shall be encouraged to eat their meals in the dining room with other residents.

(6) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(7) If the facility admits residents requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing meals. Dietitian consultation shall be provided at least quarterly and documented for residents requiring therapeutic diets.

(8) The facility shall employ food service personnel to meet the needs of residents.

(a) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

(b) All personnel who prepare or serve food shall have a current Food Handler's Permit.

(c) Dietary staff must receive a minimum of six hours of documented in-service training each year.

(9) Food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100.

R432-270-22. Housekeeping Services.

(1) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility.

(2) The facility shall designate a person to direct housekeeping services. This person shall:

(a) post routine laundry, maintenance, and cleaning schedules for housekeeping staff.

(b) ensure all furniture, bedding, linens, and equipment are clean before use by another resident.

(3) The facility shall control odors by maintaining cleanliness.

(4) There shall be a trash container in every occupied room.

(5) All cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials shall be stored in a locked area to prevent unauthorized access.

(6) Housekeeping personnel shall be trained in preparing and using cleaning solutions, cleaning procedures, proper use of equipment, proper handling of clean and soiled linen, and procedures for disposal of solid waste.

(7) Bathtubs, shower stalls, or lavatories shall not be used as storage places.

(8) Throw or scatter rugs that present a tripping hazard to residents are not permitted.

R432-270-23. Laundry Services.

(1) The facility shall provide laundry services to meet the needs of the residents, including sufficient linen supply to permit a change in bed linens at least twice a week.

(2) The facility shall inform the resident or the resident's responsible person in writing of the facility's laundry policy for residents' personal clothing.

(3) Food may not be stored, prepared, or served in any laundry area.

(4) The facility shall make available for resident use, the following:

(a) at least one washing machine and one clothes dryer; and

(b) at least one iron and ironing board.

R432-270-24. Maintenance Services.

(1) The facility shall conduct maintenance, including preventive maintenance, according to a written schedule to ensure that the facility equipment, buildings, fixtures, spaces, and grounds are safe, clean, operable, and in good repair.

(2) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

(3) Electrical systems, including appliances, cords, equipment call lights, and switches shall be maintained to guarantee safe functioning and compliance with the National Electric Code, NFPA 70.

(4) The facility shall inspect and clean or replace air filters installed in heating, air conditioning, and ventilation systems according to manufacturers specifications.

(5) A pest control program shall be conducted in the facility buildings and on the grounds by a licensed pest control contractor or a qualified employee, certified by the State, to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(6) The facility shall document maintenance work performed.

(7) Lighting levels shall meet or exceed the minimum standards as outlined in "Lighting for Health Care Facilities", Illuminating Engineering Society of North America, 1995 edition.

(8) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. The facility shall maintain hot water delivered to public and resident care areas at temperatures between 105 - 120 degrees F.

R432-270-25. Disaster and Emergency Preparedness.

(1) The facility is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee and the administrator must review and update the plan as necessary to conform with local emergency

plans. The plan shall be available for review by the Department.

(3) The facility's emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the residents.

(c) The facility shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) Personnel and residents shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The facility shall:

(a) annually review the procedures with existing staff and residents and carry out unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the facility, relieve subordinates and take charge.

(7) The facility shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The following information shall be posted in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

R432-270-26. First Aid.

(1) There shall be one staff person on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation and emergency procedures to ensure that each resident receives prompt first aid as needed.

(2) First aid training refers to any basic first aid course approved by the American Red Cross or Utah Emergency Medical Training Council.

(3) The facility must have a first aid kit available at a specified location in the facility.

(4) The facility shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

(5) The facility must have a clean up kit for blood borne pathogens.

R432-270-27. Pets.

(1) The facility may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment shall be kept clean.

(4) Small pets such as birds and hamsters shall be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-270-28. Respite Services.

(1) Assisted Living facilities may offer respite services and are not required to obtain a respite license from the Utah Department of Health.

(2) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(3) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days shall be considered a non-respite assisted living facility admission, subject to the requirements of R432-270.

(4) The facility shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(5) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(6) The facility must complete a service agreement to serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(7) The facility shall have written policies and procedures approved by the Department prior to providing respite care.

(8) Policies and procedures must be available to staff regarding the respite care clients which include:

(a) medication administration;

(b) notification of a responsible party in the case of an emergency;

(c) service agreement and admission criteria;

(d) behavior management interventions;

(e) philosophy of respite services;

(f) post-service summary;

(g) training and in-service requirement for employees; and

(h) handling personal funds.

(8) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon admission.

(9) The facility shall maintain a record for each person receiving respite services which includes:

(a) a service agreement;

(b) demographic information and resident identification data;

(c) nursing notes;

(d) physician treatment orders;

(e) records made by staff regarding daily care of the person in service;

(f) accident and injury reports; and

(g) a post-service summary.

(10) Retention and storage of respite records shall comply with R432-270-21(1)-(2).

(11) If a person has an advanced directive, a copy shall be filed in the respite record and staff shall be informed of the advanced directive.

R432-270-29. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 or be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

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R501. Human Services, Administration, Administrative Services, Licensing.

R501-13. Adult Day Care.

R501-13-1. Authority.

Pursuant to 62A-2-101 et seq., the Office of Licensing, hereinafter referred to as Office, shall license adult day care programs according to the following rules.

R501-13-2. Purpose.

Adult day care is designed to meet the needs of functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a protective setting.

R501-13-3. Definition.

Pursuant to 62A-2-101(1) adult day care means continuous care and supervision for three or more adults 18 years of age and over for at least four but less than 24 hours a day, that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

R501-13-4. Governance.

A. The program shall have a governing body which has responsibility for and authority over the policies, procedures and activities of the program.

B. The governing body shall be one of the following:

1. a Board of Directors in a nonprofit organization; or

2. commissioners or appointed officials of a governmental unit; or

3. Board of Directors or individual owners of a for-profit organization.

C. The program shall have a list of members of the governing body, indicating name, address and term of membership.

D. The program shall have an organization chart which identifies operating units of the program and their interrelationship. The chart shall define lines of authority and responsibility for all program staff.

E. When the governing body is composed of more than one person, the governing body shall establish bylaws, and shall hold formal meetings at least twice a year to evaluate quality assurance. A written record of meetings including date, attendance, agenda and actions shall be maintained on-site.

F. The responsibilities of the governing body shall be as follows:

1. to ensure program policy and procedure compliance,

2. to ensure continual compliance with relevant local, state and federal requirements,

3. to notify the Office within thirty days of changes in program administration or purpose, and

4. to ensure that the program is fiscally sound.

R501-13-5. Statutory Authority.

A. A publicly operated program shall document the statutory basis for existence.

B. A privately operated program shall document ownership or incorporation.

R501-13-6. Program Administration.

A. A qualified Director shall be designated by the governing body to be responsible for day to day program operation.

B. Records as specified shall be maintained on-site.

C. Program personnel shall not handle consumer finances.

D. There shall be a written statement of purpose to include the following:

1. mission statement,

2. description of services provided,

3. description of services not provided,

4. description of population to be served,

5. fees to be charged, and

6. participation of consumers in activities related to fund raising, publicity, research projects, and work activities that benefit anyone other than the consumer.

E. The statement of purpose shall be provided to the consumer and the responsible person and shall be available to the Office, upon request. Notice of such availability shall be posted.

F. There shall be a quality assurance plan to include a description of methods and standards used to assure high quality services. Implementation of the plan shall be documented and available for review by the Office, the consumer, and the responsible person.

G. There shall be written reports of all grievances and their conclusion or disposition. Grievance reports shall be maintained on-site.

H. The program shall have clearly stated guidelines and administrative procedures to ensure the following:

1. program management,

2. maintenance of complete and accurate accounts, books, and records, and

3. maintenance of records in an accessible, standardized order and retained as required by law.

I. All program staff, consultants, volunteers, interns and other personnel shall read, understand, and sign the current Department of Human Services, hereinafter referred to as DHS, Provider Code of Conduct.

J. The program shall post their license in a conspicuous place on the premises.

K. Each program shall comply with State and Federal laws regarding abuse, shall post a copy of State Law 62A-3-301, and provide an informational flyer to each consumer and the responsible person.

L. The program shall meet American Disabilities Act,(ADA) guidelines and make reasonable accommodation for consumers and staff. ADA guidelines and reasonable accommodation shall be determined by the authority having jurisdiction.

M. The program shall comply with local building code enforcement for disability accessibility.

R501-13-7. Record Keeping.

A. The Director shall maintain the following information on-site at all times:

1. organizational chart,

2. bylaws of the governing body if applicable,

3. minutes of formal meetings,

4. daily consumer attendance records,

5. all program related leases, contracts and purchase-of-service agreements to which the governing body is a party,

6. annual budgets and audit reports,

7. annual fire inspection report and any other inspection reports as required by law, and

8. copies of all policies and procedures.

B. The Director shall have written records onsite for each consumer, to include the following:

1. demographic information,

2. Medicaid and Medicare number, when appropriate,

3. biographical information,

4. pertinent background information,

a. personal history, including social, emotional, and physical development,

b. legal status, including consent forms for dependent consumers, and

c. an emergency contact with name, address and telephone number,

5. consumer health records including the following,

a. record of medication including dosage and administration,

b. a current health assessment signed by a physician, and

c. signed consent form,

6. intake assessment,

7. signed consumer agreement, and

8. copy of consumers' service plan.

C. The Director shall have an employment file on-site for each staff person.

D. The Office shall have the authority to review program records at anytime.

R501-13-8. Direct Service Management.

A. The program shall have a written eligibility, admission and discharge policy and procedure to include the following:

1. intake process,

2. self-admission,

3. notification of the responsible person,

4. reasons for admission refusal which includes a written, signed statement, and

5. reasons for discharge or dismissal.

B. Intake Assessment

1. Before a program admits a consumer, a written assessment shall be completed to evaluate current health and medical history, legal status, social, psychological and, as appropriate, developmental, vocational or educational factors.

2. In emergency drop-in care situations which necessitate immediate placement, the assessment shall be completed on the same day of service in all situations.

3. All methods used during intake shall consider age, cultural background, dominant language, and mode of communication.

4. During intake, the consumer's legal status, according to State Law, shall be determined as it relates to the responsible person who may have legal authority to make decisions on the consumer's behalf.

C. Consumer Agreement

A written agreement, developed with the consumer, the responsible person and the Director or designee, shall be completed, signed by all parties, and kept in the consumer's record. It shall include the following:

1. rules of program,

2. consumer and family expectations as appropriate and agreed upon,

3. services to be provided and not provided and cost of service, including refunds,

4. authorization to serve and to obtain emergency medical care, and

5. arrangements regarding absenteeism, visits, vacation, mail, gifts, and telephone calls, as appropriate.

D. Individual Consumer Service Plan

1. A program staff member in collaboration with the Director, shall be assigned to each consumer and have responsibility and authority for development, implementation, and review of the individual consumer service plan.

2. The plan shall include the following:

a. findings of the intake assessment and consumer records,

b. individualized program plan to enhance consumer well-being,

c. specification of daily activities and services,

d. methods for evaluation, and

e. discharge summary.

3. Individual consumer service plans shall be developed within three working days of admission and evaluated within 30 days of admission and every 90 days thereafter or as changes occur.

4. All persons working directly with the consumer shall review the individual consumer service plan.

E. Incident or Crisis Intervention Reports

1. There shall be written reports to document consumer death, injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, and other situations or circumstances affecting the health, safety, or well-being of a consumer while in care.

2. The report shall include the following:

a. summary information,

b. date and time of emergency intervention,

c. list of referrals if any,

d. follow-up information, and

e. signature of person preparing report and other witnesses confirming the contents of the report.

3. The report shall be completed within 48 hours of each occurrence and maintained in the individual consumer's record.

4. When an incident or crisis involves abuse, neglect or death of a consumer, the Director or designee shall document the following:

a. a preliminary written report within 24 hours of the incident, and

b. immediate notification to the Office, the consumer's legally responsible person, the nearest Human Services office, and as appropriate a law enforcement authority.

R501-13-9. Direct Service.

A. Adult day care activity plans shall be prepared to meet individual consumer and group needs and preferences. Daily activity plans may include, community living skills, work activity, recreation, nutrition, personal hygiene, social

appropriateness, and recreational activities that facilitate physical, social, psychological, and emotional development.

B. Activity plans shall be written, staff shall be oriented to their use, and shall be maintained on file at the program.

C. There shall be a daily schedule, posted and implemented as designed.

D. Each consumer shall have the opportunity to use at least four of the following activity areas each day: general activities, sedentary activities, specialized activities, rest area, self care area, appointed outdoor area, kitchen and nutrition area, and reality orientation area.

E. A sufficient amount of equipment and materials shall be provided so that consumers can participate in a variety of activities simultaneously.

F. Consumers shall receive direct supervision at all times and be encouraged to participate in activities.

G. All consumers shall receive the same standard of care regardless of funding source.

R501-13-10. Behavior Management.

A. There shall be a written policy and procedure for methods of behavior management to include the following:

1. definition of appropriate and inappropriate consumer behaviors, and

2. acceptable staff responses to inappropriate behaviors.

B. The policy shall be provided to all staff prior to working with consumers and staff shall receive annual training relative to behavior management.

C. No staff member shall use, nor permit the use of physical restraint, humiliating or frightening methods of punishment on consumers at anytime.

D. Passive physical restraint shall be used only in behavioral related situations as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint shall not be associated with punishment in any way.

R501-13-11. Rights of Consumers.

A. The program shall have a written statement of consumers' rights to include the following:

1. privacy of information and privacy for both current and closed consumers' records,

2. reasons for involuntary termination and criteria for readmission to the program,

3. potential harm or acts of violence to consumers or others,

4. consumers' responsibilities including household tasks, privileges, and rules of conduct,

5. service fees and other costs,

6. grievance and complaint procedures,

7. freedom from discrimination,

8. the right to be treated with dignity, and

9. the right to communicate with family, attorney, physician clergyman, and others.

B. The consumer and the responsible person shall be informed of the consumer rights statement to his or her understanding verbally and in writing.

R501-13-12. Personnel Administration.

A. There shall be written policies and procedures to include the following:

1. staff grievances,

2. lines of authority,

3. orientation and ongoing training,

4. performance appraisals, and

5. rules of conduct.

B. Individual staff and the Director shall review policy together.

C. The program shall have a Director, appointed by the governing body, who shall be responsible for day to day program and facility management.

D. The Director or designee shall be on-site at all times during program operating hours.

E. The program shall employ a sufficient number of trained, licensed, and qualified staff in order to meet the needs of the consumers, implement the service plan, and comply with licensing rules.

F. The program shall have a written job description for each position, to include a specific statement of duties and responsibilities and the minimum required level of education, training and work experience.

G. The governing body shall ensure that all staff are certified or licensed as legally required and appropriate to their assignment.

H. The program shall have access to a physician licensed to practice medicine in the State of Utah.

I. The Director shall have a file on-site for each staff person to include the following:

1. application for employment, including record of previous employment with references,

2. applicable credentials and certifications,

3. initial health evaluation including medical history,

4. Tuberculin test,

5. food handler permit as required,

6. training record, including first aid and CPR,

7. performance evaluations, and

8. signed copy of Code of Conduct.

J. Provisions of R501-14 and R501-18 shall be met.

K. Staff shall have access to his or her staff file and shall be allowed to add written statements to the file.

L. Staff files shall be retained for a minimum of two years after termination of employment.

M. A program using volunteers, student interns or other personnel, shall have a written policy to include the following:

1. direct supervision by a paid staff member,

2. orientation and training in the philosophy of the program, the needs of consumers, and methods of meeting those needs,

3. character reference checks, and

4. all personnel shall complete an employment application and shall read and sign the current Provider Code of Conduct. The application shall be maintained on-site for two years.

N. Staff Training:

1. Staff members shall be trained in all program policies and procedures.

2. Staff shall have Food Handler permits as required to fulfill their job description. The program shall have a staff person trained, by a certified instructor, in first aid and CPR on

duty with the consumers at all times.

3. DHS may require further specific training, which will be defined in applicable State contracts.

4. Training shall be documented and maintained in individual staff files.

R501-13-13. Staffing.

A. Adult Day Care Staffing Ratios

1. When eight or fewer consumers are present, one staff person shall provide direct supervision at all times with a second staff person meeting minimum staff requirements immediately available.

2. When nine to 16 consumers are present, two staff shall provide direct supervision at all times. The ratio of one staff person per eight consumers will continue progressively.

3. In all programs where one-half or more of the consumers are diagnosed by a physician's assessment with Alzheimer, or related dementia, the ratio shall be one staff for each six consumers.

4. Staff supervision shall be provided continually throughout staff training periods.

5. For programs with nine or more consumers, administrative and maintenance staff shall not be included in staff to consumer ratio.

B. The Director shall meet one of the following credentials:

1. a licensed nurse,

2. a licensed social worker,

3. a licensed psychologist,

4. a recreational, or physical therapist, properly licensed or certified,

5. other licensed professionals in related fields who have demonstrated competence in working with functionally impaired adults, or

6. a person that has received verifiable training to work with functionally impaired adults, and is in consultation on an ongoing basis with a licensed or certified professional with Director credentials.

C. Directors shall obtain 10 hours of related training on an annual basis.

D. Minimum Staff Requirements

1. Staff shall be 18 years of age or older and demonstrate competency in working with functionally impaired adults.

2. Staff shall receive eight hours of initial orientation training designed by the Director to meet the needs of the program, plus 10 hours of work related training on a yearly basis.

R501-13-14. Physical Facility.

A. The governing body shall provide written documentation of compliance with the following:

1. local zoning,

2. local business license,

3. local building codes,

4. local fire safety regulations, and

5. local health codes, as applicable, including but not limited to Utah Food Service and Sanitation Act.

B. In the event of ownership change, structural remodeling or a change in category of service, the Office and other regulatory agencies shall be immediately notified.

C. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.

2. The program shall take reasonable measures to ensure a safe physical environment for its consumers and staff.

R501-13-15. Physical Environment.

A. There shall be a minimum of fifty square feet of indoor floor space per consumer designated specifically for adult day care during program operational hours. Hallways, office, storage, kitchens, and bathrooms shall not be included in computation.

B. Outdoor recreational space on or off site and compatible recreational equipment shall be available to facilitate activity plans.

C. All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.

D. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off.

E. Space shall be used exclusively for adult day care during designated hours of operation.

F. Bathrooms

1. There shall be at least one bathroom exclusively for consumers use during business hours. For facilities serving more than ten consumers there shall be separate male and female bathrooms exclusively for consumer use.

2. Adult day care programs shall provide the following:

TABLE 1

Toilets		Sinks	
Male	1:15	Female	1:15
Female	1:15	Male	1:15

3. Bathrooms shall accommodate physically disabled consumers.

4. Each bathroom shall be properly supplied with toilet paper, individual disposable hand towels or air dryers, soap dispensers, and other items required for personal hygiene. Consumers' personal items shall be labeled and stored separately for each consumer.

5. Toilet rooms shall be ventilated by mechanical means or equipped with a screened window that opens. Toilet rooms shall be maintained in good operating order and in a clean and safe condition.

6. Each toilet shall be individually stalled with closing doors for privacy.

G. Safety

1. All furniture and equipment shall be maintained in a clean and safe condition. Equipment shall be operated and maintained as specified by manufacturer instructions.

2. Grade level entrance, approved ramps, handrails and other safety features shall be provided as determined by local, state and federal regulations and fire authorities in order to facilitate safe movement.

3. Provisions of the Utah Clean Air Act shall be followed if smoking is allowed in the building.

4. Use of restrictive barriers shall be approved by fire

authorities.

5. Use of throw rugs is prohibited.

6. Hot water accessible to consumers shall be maintained at a temperature that does not exceed 110 Fahrenheit.

7. A secured storage area, inaccessible to consumers, shall be used for volatile and toxic substances.

8. Heating, ventilation, and lighting shall be adequate to protect the health of the consumers. Indoor temperature shall be maintained at a minimum of 70 Fahrenheit.

H. Food Service

1. Meals provided by program:

a. Kitchens used for meal preparation shall be provided with the necessary equipment for the preparation, storage, serving and clean up of all meals. All equipment shall be maintained in working order. Food preparation areas shall be maintained in a clean and safe condition.

b. One person shall be responsible for food service.

c. The person responsible for food service shall maintain a current list of consumers with special nutritional needs or allergies. Records of consumer special nutritional needs shall be kept in the consumer's service records. Food shall be prepared and served in accordance with special nutritional needs.

2. Food activities in which consumers participate shall be directly supervised by staff with a food handlers permit.

3. Catered foods and beverages provided from outside sources shall have adequate on-site storage and refrigeration as well as a method to maintain adequate temperature control.

4. Dining space shall be designated and maintained in a clean and safe condition.

5. Menus shall be approved by a registered dietitian unless the program is participating in the Federal Adult and Child Nutrition program administrated through the State Office of Education.

6. Consumers shall receive meals or snacks according to the following:

TABLE 2

Hours in Care	Meals/Snacks That Shall Be Served
8 or more hours	1 meal and 2 snacks or 2 meals and 1 snack
4 hours but less than 8 hours	1 meal and 2 snacks
4 hours or less	1 snack

7. Sufficient food shall be available for second servings.

8. There shall be no more than three hours between snack or meal service.

9. Powdered milk shall be used for cooking only.

I. Medication

1. All prescribed and over the counter medication shall be provided by the consumer, the responsible person or by special arrangement with a licensed pharmacy.

2. All medications shall be clearly labeled. Medication shall be stored in a locked storage area. Refrigeration shall be provided as needed with medication stored in a separate container.

3. There shall be written policy and procedure to include self administered medication, medication administered by persons with legal authority to do so and the storage, control, release, and disposal of medication in accordance with federal and state law.

4. Any assisted administration of medication shall be documented daily by the Director or designee.

R501-13-16. Infectious Disease and Illness.

A. The program shall have policies and procedures designed to prevent or control infectious and communicable diseases in the facility.

B. If a consumer shows signs of illness after arrival, staff shall contact the family or the responsible person immediately. The consumer shall be isolated.

C. No consumer shall be admitted for care or allowed to remain at the program if there are signs of vomiting, diarrhea, fever or unexplained skin rash.

D. Staff shall follow Department of Health rules in the event of suspected communicable and infectious disease.

R501-13-17. Emergency Plans and General Safety.

A. Each program shall have a written plan of action for disaster developed in coordination with local emergency planning services and agencies.

B. Consumers and staff shall receive instructions on how to respond to fire warnings and other instructions for life safety.

C. The program shall have a written plan which staff follow in medical emergencies and in arrangements for medical care, including notification of consumers' physician and the responsible person.

D. Fire drills shall be conducted at least monthly at different times during hours of operation, and documented. Notation of inadequate response shall be documented.

E. The program shall have immediate access to 24 hour telephone service. Telephone numbers for emergency assistance shall be posted by the telephone.

F. The program shall have an adequately supplied first aid kit on-site, appropriate to program size.

R501-13-18. Transportation.

A. There shall be written policy and procedures for transporting consumers.

B. A list of all occupants or consumers, and the name, address and phone number of the program shall be maintained in each vehicle.

C. There shall be a means of transportation in case of emergency.

D. Vehicle drivers shall have a drivers license valid in the State of Utah and follow safety requirements of State Motor Vehicles and Public Safety. Drivers shall have certified first aid and CPR training.

E. Each vehicle shall be equipped with an adequately supplied first aid kit.

F. A belt cutter shall be kept in all vehicles used to transport consumers. The belt cutter shall be located in an easily accessible, safe place.

G. Loose items shall be secured within the vehicle to reduce the danger of flying objects in an emergency.

KEY: human services, licensing

April 15, 2000 62A-2-101 et seq.
Notice of Continuation November 7, 1997 62A-4

R527. Human Services, Recovery Services.
R527-200. Administrative Procedures.
R527-200-1. Authority.

This rule establishes procedures for informal adjudicative proceedings as required by Section 63-46b-5 of the Administrative Procedures Act.

R527-200-2. Definitions.

1. Terms used in this rule are defined in Sections 62A-11-202, 62A-11-303, and 63-46b-2.

2. In addition,

a. "office" means the Office of Recovery Services;

b. "participate" means

(i) in a proceeding that was initiated by a notice of agency action, present relevant information to the presiding officer within the time period described by statute or rule for requesting a hearing; and

(ii) if a hearing is scheduled, participate means attend the hearing;

c. "party" means the Office of Recovery Services and the respondent.

d. in all proceedings except those conducted to determine the noncooperation of a IV-A or Non-IV-A Medicaid recipient or applicant, "party" does not mean the obligee, also called the custodial parent.

e. in a proceeding to determine the noncooperation of a IV-A or Non-IV-A Medicaid recipient or applicant, the recipient or applicant is the respondent and is therefore a "party".

R527-200-3. Purpose.

The purpose of this rule is to:

1. establish the form of proceedings;

2. provide procedures for requesting and obtaining a hearing when a proceeding is initiated by a notice of agency action;

3. provide procedures and standards for orders resulting from the administrative process;

4. provide procedures for informal proceedings;

5. provide procedures for the conduct of hearings, conferences, and administrative reviews;

6. provide procedures for requesting reconsideration;

7. provide procedures for a motion to set aside a default order;

8. provide procedures for amending an administrative order;

9. provide procedures for setting aside an administrative order; and

10. provide procedures for requesting judicial review.

R527-200-4. Designation of Presiding Officers.

The following persons are designated presiding officers in adjudicative proceedings:

1. team agents;

2. team managers;

3. program coordinators;

4. program specialists;

5. quality assurance specialists;

6. associate regional directors;

7. regional directors;

8. directors;

9. other persons designated by the director of the Office of Recovery Services.

R527-200-5. Form of Proceeding.

All adjudicative proceedings commenced by the office through a notice of agency action, or commenced by other persons affected by the office's actions through a request for agency action shall be informal adjudicative proceedings.

R527-200-6. Informal Adjudicative Proceedings.

The following actions are considered to be informal adjudicative proceedings:

1. hearings, conferences, or administrative reviews to establish, modify, or renew child support orders;

2. conferences to determine paternity;

3. conferences or hearings to establish a judgment for genetic testing costs;

4. conferences or hearings to establish a judgment for birth expenses;

5. conferences or hearings to establish, modify, or renew an order regarding liability for medical and dental expenses of a dependent child;

6. administrative reviews to establish an order when a notice to enroll a child in a medical insurance plan is contested;

7. conferences or hearings to establish an order against a garnishee enforcing an administrative garnishment;

8. administrative reviews to determine whether the information concerning a support debt which will be reported to consumer reporting agencies is accurate;

9. conferences or hearings to establish the cause of an overpayment obligation, and to modify, or renew the obligation;

10. hearings, conferences, or administrative reviews to amend an administrative order;

11. hearings, conferences, or administrative reviews to set aside an administrative order;

12. administrative reviews to establish an order which determines past-due support following a request for agency action;

13. administrative reviews to establish an order when an office determination of noncooperation is contested by IV-A or Non-IV-A Medicaid recipients;

14. conferences or hearings to establish a judgment against a responsible party for costs and/or fees, and to impose penalties associated with legal action taken by the office; and

15. administrative reviews to establish an order of non-disclosure when a determination is made not to disclose a parent's identifying information to another state in an interstate case action.

R527-200-7. Service of Notice and Orders.

Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Section 63-46b may be served using methods provided by Section 63-46b or the Utah Rules of Civil Procedure.

R527-200-8. Procedures for Informal Adjudicative Proceedings.

The procedures for informal adjudicative proceedings are

as follows:

1. In proceedings initiated by a notice of agency action, t he presiding officer will issue an order of default unless the respondent does one of the following in response to service of the notice:

a. pays the entire amount in full;

b. participates as provided in R527-200-12;

c. or, for overpayment programs, requests a hearing as provided in R527-200-9.

2. In proceedings initiated by a notice of agency action, the presiding officer shall schedule a hearing if available under R527-200-9 and the office receives the respondent's written request:

a. within 30 days of service of notice of agency action; or

b. before an order is issued by the presiding officer.

3. In administrative garnishment proceedings, the presiding officer shall schedule an administrative review if the office receives the obligor's written request for agency action within 10 days of the financial institution sending notice to the obligor of an administrative garnishment, or if the obligor requests the administrative review prior to any request by the garnishee for the issuance of an order to the garnishee to pay the office;

4. Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing which states the following:

a. the decision;

b. the reason for the decision;

c. a notice of the right to request reconsideration and the right to petition for judicial review; and

d. the time limits for requesting reconsideration or filing a petition for judicial review.

5. The presiding officer's order shall be based on the facts appearing in the agency's case records and on the facts presented in evidence at any hearings, conferences, or administrative reviews.

6. A copy of the presiding officer's order shall be promptly mailed to each of the parties.

R527-200-9. Availability of a Hearing or Administrative Review in Informal Adjudicative Proceedings.

1. A hearing before a presiding officer in the Office of Administrative Hearings, Department of Human Services is permitted in an informal adjudicative proceeding if:

a. the proceeding was initiated by a notice of agency action; and

b. the respondent in a properly filed request for hearing or in the course of participation raises a genuine issue as to a material fact as provided in R527-200-10; and

c. for child support services, participates in a preliminary agency conference.

2. An administrative review before a presiding officer in the Office of Recovery Services, Department of Human Services is permitted if an informal adjudicative proceeding is initiated by a request for agency action.

a. The presiding officer shall conduct a review of all documentation provided by the requesting party and in the agency files, and issue a Decision and Order stating the decision and the reasons for the decision.

b. The requesting party shall not be required to appear, either in person or through representation when the administrative review is conducted, but may choose to attend.

R527-200-10. Hearings in Informal Adjudicative Proceedings.

1. In proceedings initiated by a notice of agency action, all hearing requests shall be referred to the presiding officer appointed to conduct hearings.

2. The presiding officer shall give timely notice of the date and time of the hearing to all parties.

3. Before granting a hearing in a case referred, the presiding officer appointed to conduct the hearing may decide whether the respondent raises a genuine issue as to a material fact. Upon determining there is no genuine issue as to a material fact, the presiding officer may deny the request for hearing, and close the adjudicative proceeding.

4. The respondent may object to the denial of a hearing as grounds for relief in a request for reconsideration.

5. There is no genuine issue as to a material fact if:

a. the evidence gathered by the office and the evidence presented for acceptance by the respondent are sufficient to establish the obligation of the respondent under applicable law; and

b. no other evidence in the record or presented for acceptance by the respondent in the course of respondent's participation conflicts with the evidence to be relied upon by the presiding officer in issuing an order.

6. Evidence upon which a presiding officer may rely in issuing an order when there has been no hearing:

a. documented wage information from employers or governmental sources;

b. failure of the respondent to produce upon request of the presiding officer canceled checks as evidence of payments made;

c. failure of the respondent to produce a record kept by the clerk of court, a financial institution, or the office, showing payments made;

d. failure of the respondent to produce a written agreement in a Non-IV-A case which was signed by both the absent parent and the custodial parent providing for an alternate means of satisfying a child support obligation;

e. birth certificates of the children whose support is sought from the respondent;

f. certified copies of the latest support orders;

g. other applicable documentation.

R527-200-11. Telephonic Hearings.

Telephonic hearings will be held at the discretion of the Office of Administrative Hearings, Department of Human Services.

R527-200-12. Procedures and Standards for Orders Resulting from Service of a Notice of Agency Action.

1. If the respondent agrees with the notice of agency action, he may stipulate to the facts and to the amount of the debt and current obligation to be paid. A stipulation, and judgment and order based on that stipulation is prepared by the office for the respondent's signature. Orders based on

stipulation are not subject to reconsideration or judicial review.

2. If the respondent participates by attending a preliminary conference or otherwise presents relevant information to the presiding officer, but does not reach an agreement with the office or is unavailable to sign a stipulation, and does not request a hearing, the presiding officer shall issue a judgment and order based on that participation.

3. If the respondent participates in any way after receiving a notice of agency action to establish paternity and child support, and fails to respond to subsequent notices for genetic testing or test results, the presiding officer shall issue a judgment and order based on the failure of the respondent to respond to the subsequent notices.

4. If the respondent requests a hearing and participates by attending a preliminary agency conference, and after that conference the respondent does not agree with the notice of agency action, and participates by attending the hearing, the presiding officer who conducts the hearing shall issue an order based upon the hearing.

5. If the respondent fails to participate as follows, the appropriate presiding officer may issue an order of default and default judgment:

a. the respondent fails to respond to the notice of agency action and does not request a hearing;

b. after proper notice the respondent fails to attend a preliminary conference scheduled by the presiding officer to consider matters which may aid in the disposition of the action; or

c. after proper notice the respondent fails to attend a hearing scheduled by the presiding officer pursuant to a written request for a hearing.

6. The default judgment is taken for the same amount and for the same months specified in the notice of agency action which was served on the respondent. The judgment cannot be taken for more than the amount or time periods specified in the notice of agency action. If there is no previous court order and the best available information supports the amount, the judgment may be taken for less than the amount specified in the notice of agency action. The respondent may seek to have the default order set aside, in accordance with Section 63-46b-11.

7. If a respondent's request for a hearing is denied under R527-200-10, the presiding officer issues a judgment and order based upon the information in the case record.

8. Notwithstanding any order which sets payments on arrearages, the office reserves the right to periodically report the total past-due support amount to consumer reporting agencies, intercept state and federal tax refunds, submit cases to the federal administrative offset program where permitted by federal regulation, levy upon real and personal property, and to reassess payments on arrearages.

R527-200-13. Conduct of Hearings, Conferences, and Administrative Reviews in Informal Adjudicative Proceedings.

1. The hearing, conference, or administrative review shall be conducted by a duly qualified presiding officer. The presiding officer shall not have been involved in preparing the information alleged in the notice which is the basis of the adjudicative proceeding. No presiding officer shall conduct a hearing, conference, or administrative review in a contested case if it is alleged and proved that good cause exists for the removal of the presiding officer assigned to the case. The party or representative requesting the change of presiding officer shall make the request in writing, and the request shall be filed and called to the attention of the presiding officer not less than 24 hours in advance of the hearing.

2. Duties of the presiding officer when conducting a hearing:

a. Based upon the notice of agency action, objections thereto, if any, and the evidence adduced at the hearing, the presiding officer shall determine the liability and responsibility, if any, of the respondent under Section 62A-11-304.2. Following determination of liability, the presiding officer shall refer the obligor to the team handling the case for determination of acceptable periodic payment or alternative means of satisfaction of any arrearage obligation.

b. The presiding officer conducting the hearing may:

(i) regulate the course of hearing on all issues designated for hearing;

(ii) receive and determine procedural requests, rule on offers of proof and evidentiary objections, receive relevant evidence, rule on the scope and extent of cross-examination, and hear argument and make determination of all questions of law necessary to the conduct of the hearing;

(iii) request testimony under oath or affirmation administered by the presiding officer;

(iv) upon motion, amend the notice of agency action to conform to the evidence.

3. Rules of Evidence in hearings:

a. Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence.

b. Any person who is a party to the proceedings may call witnesses and present such oral, documentary, and other evidence and comment on the issues and conduct such cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for fact hearing and as may affect the disposition of any interest which permits the person participating to be a party.

c. Any evidence may be presented by affidavit rather than by oral testimony subject to the right of any party to call and examine or cross-examine the affiant.

d. All relevant evidence shall be admitted.

e. Official notice may be taken of all facts of which judicial notice may be taken in the courts of this state.

f. All parties shall have access to information contained in the office's files and to all materials and information gathered in the investigation, to the extent permitted by law and subject to R527-5.

g. Intervention is prohibited.

h. In child support cases the hearing shall be open to the obligee and all parties, as defined in R527-200-2.

4. Rights of the parties in hearings: A respondent appearing before the presiding officer for the purpose of a hearing may be represented by a licensed attorney, or, after leave of the presiding officer, any other person designated to act as the respondent's representative for the purpose of the hearing. The office's supporting evidence for the office's claim shall be

presented at a hearing before a presiding officer by an agent or representative from the office. The supporting evidence may, at the office's discretion, be presented by a representative from the office of the Attorney General or by a staff attorney.

R527-200-14. Agency Review.

Agency review shall not be allowed. Nothing in this rule prohibits a party from filing a request for reconsideration or for judicial review as provided in Sections 63-46b-13 and 63-46b-14.

R527-200-15. Reconsideration.

Either the respondent or the office may request reconsideration in accordance with Section 63-46b-13 once during an informal adjudicative proceeding. The obligee is not a party to the proceedings; therefore, the obligee may not request reconsideration.

R527-200-16. Setting Aside Administrative Orders.

1. The office may set aside an administrative order for reasons including the following:

a. A rule or policy was not followed when the order was taken.

b. The obligor was not properly served with a notice of agency action.

c. The obligor was not given due process.

d. The order has been replaced by a judicial order which covers the same time period.

2. The office shall notify the obligor of its intent to set the order aside by serving the obligor with a notice of agency action. The notice shall be signed by a presiding officer.

3. If after serving the obligor with a notice of agency action, the presiding officer determines that the order shall be set aside, the office shall notify the obligor.

R527-200-17. Amending Administrative Orders.

1. The office may amend an order for reasons including the following:

a. A clerical mistake was made in the preparation of the order.

b. The time periods covered in the order overlap the time periods in another order for the same participants.

2. The office shall notify the obligor of its intent to amend the order by serving the obligor with a notice of agency action. The notice shall be signed by a presiding officer.

3. If after serving the obligor with a notice of agency action, the presiding officer determines that the order shall be amended, the office shall provide a copy of the amended order to the obligor.

R527-200-18. Modifying an Administrative Paternity Order.

1. If an administrative paternity order has been entered and the individual determined to be the father provides genetic test results which appear to exclude him as the biological father, the presiding officer shall initiate an adjudicative proceeding to modify the paternity order prospectively.

2. The presiding officer shall notify the mother and the previously determined legal father of the intent to modify the order by sending notices of intent to modify based on the genetic test results.

3. If the mother or previously determined legal father do not present other evidence which calls into doubt the credibility of the genetic test results, the presiding officer shall issue an order which modifies the original order, finding the previously determined legal father to no longer be the legal father effective the date the modified order is issued. The presiding officer shall send a copy of the order to both the mother and the former legal father.

4. If other evidence is presented which calls into doubt the credibility of the genetic test results, the presiding officer shall not modify the original paternity order. The presiding officer shall send notice of the decision to the mother and the father, which will inform the father of his right to appeal the decision to a court of competent jurisdiction.

KEY: administrative law, child support, overpayment*, welfare fraud

February 1, 2000	**62A-11-203**
Notice of Continuation November 7, 1996	**62A-11-304.1**
	62A-11-304.2
	62A-11-307.2
	63-46b

R527. Human Services, Recovery Services.
R527-800. Enforcement Procedures.
R527-800-1. Purpose and Authority.

A. Purpose

Enforcement actions may be initiated when:

1. The obligor has agreed.

2. The obligor is entitled to a federal or state income tax refund which may be applied to certain debts under specific Federal and State statute.

3. The obligor has failed to make payments on the debt and the agency has information regarding the obligor's income and/or assets.

B. Authority

Section 62A-11-104 charges the Office of Recovery Services with the duty to collect money due the department. Enforcement actions shall be initiated in accordance with the specific statutory authority provided under specific state statute and in accordance with the Criminal Code, Utah Rules of Civil Procedure Uniform Probate Code and the Judicial Code Utah Code Annotated.

R527-800-2. Credit of Tax Refund.

The office may credit an overpayment of taxes toward a judgment owed to the state, in accordance with Section 59-10-529.

R527-800-3. Garnishment of Wages.

The department may garnish wages in accordance with Rule 64D, Utah Rules of Civil Procedure.

R527-800-4. Acquisition and Disposition of Real Property.

A. The department may acquire property in payment for an obligation by:

1. voluntary conveyance.
2. conveyance by heirs; or
3. execution.

B. Acquisition of real property is an action of last resort.

C. Voluntary conveyance shall be by Warranty or Quit Claim Deed in favor of the department.

D. Property owned by the state is tax exempt in accordance with Section 59-2-1101.

R527-800-5. Sale of Real Property.

A. Certified appraisals and preliminary title reports may be requested.

B. The department will not provide title insurance. The State will clear all back taxes and encumbrances from the property at the time of closing.

R527-800-6. Liens, Cost of Sale.

The costs of sale which are allowed are those provided in 62A-11-111.

R527-800-7. Sanctions, Retained Support.

In accordance with 45 CFR 232.12(d), if a recipient incurred a Retained Support obligation and fails to either make an agreement to pay the debt or makes an agreement and defaults, a sanction for non-cooperation must be imposed if the obligor is currently receiving AFDC.

R527-800-8. Sanction, Medical Support, TPL, Paternity.

In accordance with 42 CFR 433.147-148 a recipient of medical assistance must cooperate with the state agency in providing information regarding Third Party Liability, establishment of paternity for children to establish medical support liability, and in utilizing all available third party resources to offset medicaid expenditures. Failure to cooperate will result in the recipient being removed from the medical assistance case.

KEY: enforcement, civil procedure, medicaid, welfare fraud
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Notice of Continuation September 24, 1996 35A-1-502
62A-11-104
62A-11-110

R590. Insurance, Administration.
R590-140. Reference Filings of Rate Service Organization Prospective Loss Costs.
R590-140-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to the general authority granted under Subsections 31A-2-201(1) and 31A-2-201(3)(a) to adopt rules for the implementation of the Utah Insurance Code. Further authority is granted by Subsection 31A-19-206(2) which allows the commissioner to issue rules requiring the filing of supporting data necessary for the proper functioning of the rate monitoring and regulating process.

R590-140-2. Purpose.

Pursuant to 31A-19-205, rate filings made by individual insurers in compliance with the requirements of Section 31A-19-203 may include the experience of rate service organizations. This experience includes the statistical data, prospective loss costs and supporting information as defined in this rule. The purpose of this rule is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of Section 31A-19-203 as to the rate and supplementary rate information filings of property and casualty insurers that refer to and incorporate, in whole or in part, prospective loss costs filings made by rate service organizations.

R590-140-3. Applicability and Scope.

This rule applies to the types of insurance described in Section 31A-19-101 and to insurers making filings under Section 31A-19-203 subject to any exemptions the commissioner may order pursuant to Section 31A-19-103.

R590-140-4. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Section 31A-1-301, and Section 31A-19-102 in addition to the following:

(1) "Expenses" means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses and fees.

(2) "Prospective loss costs" means that portion of a rate that is based on historical aggregate losses and loss adjustment expenses which are adjusted to their ultimate value and projected to a future point in time. Except for loss adjustment expenses, the term does not include provisions for expenses or profit.

(3) "Rate" means the cost of insurance per exposure unit and may be expressed as a single number or as prospective loss costs with an adjustment factor to account for the treatment of expenses, profit and variations in loss experience before individual risk variations based on loss or expense are applied. The term does not include minimum premiums.

(4) "Reference filing" means a filing of prospective loss costs, supporting information, or both, made by a licensed rate service organization. An insurer that subscribes to the rate service organization may refer to or incorporate elements of reference filings in its own filings.

(5) "Supplementary rate information" includes, in addition to those elements listed in Subsection 31A-19-103(4) any manual or plan of policy writing rules, classification system, territory codes and descriptions, and any other similar information needed to determine the applicable premium for an insured. The term includes factors and relativities such as increased limits factors, classification relativities and deductible relativities.

(6) "Supporting information" includes:

(a) the experience and judgment of the insurer or organization making the filing and the experience or data of other insurers or organizations relied upon;

(b) the interpretation of any statistical data relied upon;

(c) descriptions of methods used in making the rates; and

(d) any other similar information required by the commissioner.

R590-140-5. Filings of Advisory Prospective Loss Costs and Adjustment Factors.

(1) A rate service organization may develop and make reference filings containing advisory prospective loss costs. The reference filing must:

(a) contain the statistical data and supporting information for the calculations or assumptions underlying those prospective loss costs; and

(b) be filed and effective in the same manner as rates filed pursuant to Section 31A-19-203.

(2) An insurer may make a filing of rates by:

(a) becoming a participating insurer of a licensed rate service organization that makes reference filings of advisory prospective loss costs;

(b) authorizing the commissioner to accept reference filings on its behalf; and

(c) filing with the commissioner the information required in Section R590-140-6.

(3) If an insurer chooses the procedure outlined in Subsection (2) above, the insurer's rates shall be:

(a) the prospective loss costs filed by the rate service organization pursuant to Subsection (1); and

(b) any adjustment to the prospective loss costs filed as required by Section R590-140-6 that are in effect for that insurer.

(4) The filing of an adjustment to the prospective loss costs by an insurer shall become effective in accordance with the provisions of Section 31A-19-203 that apply to the filing of rates.

R590-140-6. Required Filing Documents.

A filing by an insurer that refers to a reference filing of prospective loss costs made by a rate service organization must include the UTAH Insurer Loss Costs Multiplier Filing Forms Pages one and two and the Expense Constant Supplement, if applicable. Samples of these forms are available from the Utah Insurance Department.

R590-140-7. Supplementary Rate Information.

(1) A rate service organization may develop and make filings of supplementary rate information. These filings shall be made in accordance with Sections 31A-19-102(2), 31A-19-203 and 31A-19-205.

(2) An insurer may make a filing of supplementary rate information by:

(a) becoming a participating insurer of a licensed rate service organization; and

(b) authorizing the commissioner to accept a filing by the organization on behalf of the insurer.

(3) Except for any modification filed by the insurer, the supplementary rate information of the insurer must be the same as that filed by the rate service organization.

R590-140-8. Filing of Rate and Manual Pages.

(1) If the final rates of an insurer are determined solely by applying its adjustment, as presented in the UTAH Insurer Loss Costs Multiplier Filing Forms Pages one and two and the Expense Constant Supplement, if applicable, to the prospective loss costs that are contained in the reference filing and printed in the rating manual of the rate service organization, the insurer is not required to develop or file its final rate pages with the commissioner.

(2) If an insurer prints and distributes final rate pages for its own use and the rates are based on the application of its filed adjustments to the prospective loss costs of a rate service organization, the insurer must file those pages with the commissioner.

(3) If a rate service organization does not print prospective loss costs in its rating manual, the insurer must submit its rates to the commissioner.

(4) If a rate service organization does not file certain premium elements, such as minimum premiums, these must be filed by the insurer.

R590-140-9. Existing Rates and Deviations.

(1) Nothing in these procedures shall be construed to require a rate service organization or its participating insurers to refile rates previously filed with the commissioner.

(2) A participating insurer of a rate service organization may continue to use all rates and deviations currently filed for its use until the insurer makes its own filing to change its rates by making an independent filing or by filing the UTAH Insurer Loss Costs Multiplier Filing Forms Pages one and two and the Expense Constant Supplement, if applicable that adopts the prospective loss costs of a rate service organization or an adjustment to the prospective loss costs by the insurer.

(3) In order that the commissioner may verify the rates being used, the insurer is required to maintain documentation demonstrating that the rates and deviations being used by the insurer have been filed with the commissioner. These documents must be produced at the request of the commissioner. Failure or refusal to do so may subject the insurer to sanctions pursuant to 31A-2-308.

R590-140-10. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, its invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance
February 24, 1997 31A-2-201

Notice of Continuation April 13, 2000 31A-19-206

R590. Insurance, Administration.

R590-153. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.

R590-153-1. Authority.

This rule is promulgated pursuant to Section 31A-2-201(3)(a), in which the Commissioner is empowered to make rules to implement the Insurance Code, and pursuant to the specific authority of Section 31A-23-302(8), which authorizes the Commissioner to define unfair methods of competition or any other unfair or deceptive act or practice in the business of insurance.

R590-153-2. Purpose.

The purpose of this rule is to identify certain practices which the commissioner finds provide unfair inducements for the placement of title insurance business and as such constitute unfair methods of competition.

R590-153-3. Scope.

This Rule applies to all title insurers, title insurance agencies and title insurance agents and all employees, representatives and any other party working for or on behalf of said entities whether as a full time or part time employee or as an independent contractor.

R590-153-4. Definitions.

For the purpose of this Rule the commissioner adopts the definitions as set forth in Section 31A-1-301, and the following:

A. "Producer of title business" means any person engaged in a business, profession or occupation of:

(1) buying or selling interests in real property;

(2) making loans secured by interests in real property; and

(3) shall include but not be limited to real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, developers, sub-dividers, attorneys, consumers and the employees, agents, representatives, or solicitors of any of the foregoing.

B. "Discount" means the furnishing or offering to furnish title insurance, services constituting the business of title insurance or escrow services for a total charge less than the amounts set forth in the applicable rate schedules filed pursuant to Section 31A-19a-203 or 31A-19a-209.

C. "Trade Association" means a recognized association of persons, a majority of whom are producers of title insurance business or persons whose primary activity involves real property.

D. "Business meals" shall include drinks and tips.

E. "Official Trade Association Publication" means:

(1) a membership directory, provided its exclusive purpose is that of providing the distribution of an annual roster of the association's members to the membership and other interested parties; or

(2) an annual, semi-annual, quarterly or monthly publication containing information and topical material for the benefit of the members of the association.

R590-153-5. Unfair Methods of Competition, Acts and Practices.

The commissioner finds that providing or offering to provide any of the following benefits by parties identified in Section R590-153-3 to any producer of title insurance, either directly or indirectly, except as specifically allowed in Section R590-153-6 below, is a material and unfair inducement to obtaining title insurance business and constitutes an unfair method of competition in the business of title insurance prohibited under Section 31A-23-302:

A. The furnishing of a commitment to provide title insurance without charge or at a charge discounted from an applicable rate filing. The prima facie cost of producing a commitment to insure shall be 60% of the minimum rate filed by the insurance company in the absence of a cost supported rate filing either higher or lower.

B. The paying of any charges for the cancellation of an existing title insurance commitment issued by a competing organization, unless that commitment discloses a defect which gives rise to a claim on an existing policy.

C. Furnishing escrow services pursuant to Section 31A-23-307, for a charge less than the charge filed pursuant to Section 31A-19a-209(5) or the filing of charges for escrow services with the commissioner which are less than the actual cost of providing the services.

D. Waiving all or any part of established fees or charges for services which are not the subject of rates filed with the Commissioner.

E. Deferring or waiving any payment for insurance or services otherwise due and payable, including "holding for resale".

F. Furnishing services not reasonably related to a bona fide title insurance or escrow, settlement, or closing transaction. Examples (non exclusive): computer services, non-related delivery services, accounting assistance, legal counseling.

G. The paying for, furnishing, or waiving all or any part of the rent for space occupied by any producer of title insurance business.

H. Renting space from any producer of title business, regardless of the purpose, at a rate which is excessive when compared with rents for comparable space in the same geographic area, or paying rent based in whole or in part on the volume of business generated by any producer of title insurance business.

I. Furnishing all or any part of the time or productive effort of any employee of the title insurance organization or insurer (i.e., secretary, clerk, messenger, escrow officer etc.) to any producer of title insurance business.

J. Paying for all or any part of the salary of an employee of any producer of title insurance business.

K. Paying, or offering to pay, either directly or indirectly, salary, commissions or any other consideration to any employee who is at the same time engaged as a real estate agent or broker or as a mortgage broker.

L. Paying for the fees or charges of a professional (e.g. an appraiser, surveyor, engineer, attorney, etc.) whose services are required by any producer of title insurance business to structure or complete a particular transaction.

M. Sponsoring, cosponsoring, subsidizing, contributing fees, prizes, gifts, food or otherwise providing anything of value for an activity, except as allowed under Subsection R590-153-6(F) of a producer of title insurance business. Activities include,

but are not limited to: "open houses" at homes or property for sale, meetings, breakfasts, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, gambling trips, sporting events of all kinds, hunting trips or outings, golf or ski tournaments, artistic performances and outings in recreation areas or entertainment areas.

N. Sponsoring, subsidizing, supplying prizes or labor, except as allowed under Subsection R590-153-6(C), or otherwise providing things of value for promotional activities of producers of title insurance business. Title agents or insurers may attend activities of producers if there is no additional cost to the agent or insurer other than their own entry fees, registration fees, meals, etc., and provided that these fees are no greater than those charged to producers of title insurance business or others attending the function.

O. Providing gifts or anything of value to a producer of title insurance business in connection with social events such as birthdays, job promotions, etc. except as provided in Subsection R590-153-6(H). A letter or card in these instances will not be interpreted as providing a thing of value.

P. Providing either directly or indirectly, a compensating balance or deposit in a lending institution either for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution. This does not preclude transactions with lending institutions which are in the normal course of business.

Q. Furnishing any part of a title agency's or insurer's facilities (e.g. conference rooms, meeting rooms, etc.) to a producer of title insurance business or trade association without receiving a fair rental charge comparable to other rental charges for facilities in the same geographic area.

R. Furnishing information packets, listing kits, "farm" packages or any other form of title evidence without first filing a specimen form copy with the commissioner and specifying a rate for which the form is available. The rate may not be less than the actual cost of producing the information and the material furnished.

S. Paying for any advertising on behalf of a producer of title insurance business.

T. Advertising jointly with a producer of title insurance business on subdivision or condominium project signs, or signs for the sale of a lot or lots in a subdivision or units in a condominium project. A title insurance agency or company may advertise independently that it has provided title insurance for a particular subdivision, condominium project etc., but may not indicate that all future title insurance will be written by that agency or through that company.

U. A direct or indirect benefit provided to a producer of title insurance which is not specified in Section R590-153-6 below, will be investigated by the insurance department for the purpose of determining whether it should be defined by the commissioner as an unfair inducement under Section 31A-23-302(8).

R590-153-6. Permitted Advertising and Business Entertainment.

A. A title agency, agent or insurer may furnish without charge a copy of any existing plat map, and tax information covering a specific parcel of real estate, (Tax identification number, assessed owner, assessed value of land and improvements and the latest tax amount) without additions or addenda or attachments which may be construed as reaching conclusions of the agency, insurer or agent regarding matters of marketable ownership or encumbrances.

B. Advertisements by title agencies or companies must comply with the following:

(1) The advertisement must be purely self-promotional.

(2) Advertisements may not be placed in a publication, including an internet web page, that is hosted, published, produced for, distributed by or on behalf of a producer or group of producers of title insurance business except as allowed under R590-153-6 (B)(3).

(3) Advertisements in official trade association publications are permissible as long as any agency or title insurer has an equal opportunity to advertise in the publication and at the standard rates other advertisers in the publication are charged.

C. A title agency, insurer or agent may donate time to serve on a trade association committee and may also serve as an officer for the trade association.

D. A title agency or insurer may have two self-promotional open houses per calendar year for each of its owned or occupied facilities, (including branch offices) (e.g. a Christmas party, an open house for remodeling of its facility, an open house for a new facility for the organization). The agency or insurer may not expend more than $10.00 per guest per open house. The open house may take place on or off the agency's or insurer's premises but may not take place on the producer's premises.

E. A title agency or insurer may distribute self-promotional items having a value of $3 or less to producers of title insurance business, consumers and members of the general public. These self-promotional items shall be novelty gifts which are nonedible and may not be personalized or bear the name of the donee. Self-promotional items may only be distributed in the regular course of business. Self-promotional items may not be given to producers of title insurance business or trade associations for redistribution by these entities.

F. A title agency or insurer may make expenditures for business meals or activities on behalf of any person, whether a producer of title insurance or not as a method of advertising if the expenditure meets all the following criteria:

(1) The agent representing the title agency or an employee of the insurer must be present during the business meal or activity.

(2) There is a substantial title insurance business discussion directly before, during or after the business meal or activity.

(3) The total cost of the business meal and the activity is not more than $75.00 per person, per day.

(4) No more than three individuals from an office of a producer of title insurance business may be provided a business meal or activity by an agency or insurer in a single day.

(5) The entire business meal or activity may take place on or off the agency's or insurer's premises, but may not take place on the producer's premises.

G. A title agency or insurer may conduct educational

programs under the following conditions:

(1) The educational program shall address only title insurance, escrow or topics directly related thereto.

(2) The educational program must be of at least one hour duration.

(3) For each hour of education $10 or less per person may be expended, including the cost of meals and refreshments.

(4) No more than one such educational program may be conducted at the office of a producer of title insurance business per calendar quarter.

H. A title agency or insurer may acknowledge a wedding, birth or adoption of a child, or funeral of a producer of title insurance business or members of his/her immediate family with flowers or gifts not to exceed $50.00.

I. Any other advertising and/or business entertainment must be requested in writing and approved in advance and in writing by the commissioner.

R590-153-7. Penalties.

Subject to the provisions of the Utah Administrative Procedures Act, violators of this rule shall be subject to forfeitures, suspension or revocation of their insurance license or Certificate of Authority, and/or any other penalties or measures as are determined by the commissioner in accordance with law.

R590-153-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance
April 11, 2000 31A-2-201
Notice of Continuation December 15, 1997 31A-23-302

R590. Insurance, Administration.
R590-164. Uniform Health Billing Rule.
R590-164-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Subsection 31A-22-614.5.

R590-164-2. Purpose.

The purpose of this rule is to designate uniform claim forms, billing codes and compatible electronic data interchange accepted by health issuers.

R590-164-3. Applicability and Scope.

A. This rule applies to health claims and encounters.

B. Except as otherwise specifically provided, the requirements of this rule apply to issuers and providers.

C. This rule does not prohibit an issuer from requesting additional information required to determine eligibility of the claim under the terms of the policy or certificate issued to the claimant.

D. This rule does not prohibit an issuer, or provider from using alternative forms or procedures specified in a written contract between the provider and issuer.

E. This rule does not exempt a provider or issuer from data reporting requirements under state or federal law or regulation.

R590-164-4. Definitions.

As used in this rule:

A. Uniform Claim Forms are defined as:

(1) "HCFA Form 1450" means the health insurance claim form maintained by HCFA for use by institutional care providers. Currently this form is known as the UB92.

(2) "HCFA Form 1500" means the health insurance claim form maintained by HCFA for use by health care providers.

(3) "J512 Form" means the uniform dental claim form approved by the American Dental Association for use by dentists.

(4) "NCPDP" means the National Council for Prescription Drug Program's Claim Form or its electronic counterpart.

B. Uniform Claim Codes are defined as:

(1) "ASA Codes" means the codes contained in the ASA Relative Value Guide developed and maintained by the American Society of Anesthesiologists to describe anesthesia services and related modifiers.

(2) "CDT-1 Codes" means the current dental terminology prescribed by the American Dental Association.

(3) "CPT-4 Codes" means the physicians current procedural terminology, fourth edition published by the American Medical Association.

(4) "HCPCS" means HCFA's Common Procedure Coding System, a coding system which describes products, supplies, procedures and health professional services and includes, the American Medical Associations (AMA's) Physician Current Procedural Terminology, Fourth Edition (CPT-4) codes, alphanumeric codes, and related modifiers. This includes:

(a) "HCPCS Level 1 Codes" which are the AMA's CPT-4 codes and modifiers for professional services and procedures.

(b) "HCPCS Level 2 Codes" which are national alphanumeric codes and modifiers for health care products and supplies, as well as some codes for professional services not included in the AMA's CPT-4.

(5) "ICD-9-CM Codes" means the diagnosis and procedure codes in the International Classification of Diseases, Ninth revision, clinical modifications published by the U.S. Department of Health and Human Services.

(6) "NDC" means the National Drug Codes of the Food and Drug Administration.

(7) "UB92 Codes" means the code structure and instructions established for use by the National Uniform Billing Committee.

C. "Electronic Standard Format" means the ASCX12N standard format developed by the Accredited Standards Committee X12N Insurance Subcommittee of the American National Standards Institute using the implementation guides approved by the commissioner.

D. "Issuer" means an insurer or third party administrator that pays for, or reimburses for the costs of health care expense.

E. "Provider" means any person, partnership, association, corporation or other facility or institution that renders or causes to be rendered health care or professional services, and officers, employees or agents of any of the above acting in the course and scope of their employment.

F. "HCFA" means the Health Care Financing Administration of the U.S. Department of Health and Human Services.

R590-164-5. General Provisions.

A. Issuers shall accept and may require the applicable uniform claim forms completed with the uniform claim codes.

B. Issuers shall accept the applicable electronic data if transmitted in the electronic standard format. Issuers may reject electronic data if not transmitted in the electronic standard format.

R590-164-6. Separability.

If any provision of this rule or the application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.

KEY: insurance law
July 1, 1995 **31A-22-614.5**
Notice of Continuation April 11, 2000

R602. Labor Commission, Adjudication.
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.
R602-2-1. Pleadings and Discovery.

A. For the purposes of this rule, "Commission" means the Labor Commission. "Division" means the Division of Adjudication within the Labor Commission. Adjudicative proceedings for workers' compensation and occupational disease claims may be commenced by the injured worker or dependent filing a request for agency action with the Commission. The Administrative Law Judge is afforded discretion in allowing intervention of other parties pursuant to Section 63-46b-9. The Application for Hearing is the request for agency action. All such applications shall include supporting medical documentation of the claim where there is a dispute over medical issues. Applications without supporting documentation will not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided.

B. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests on the applicant to initiate the action by filing an Application for Hearing with the Commission.

C. When an Application for Hearing is filed with the Commission, the Commission shall forthwith mail a copy to the employer or to the employer's insurance carrier.

D. The employer or insurance carrier shall have 30 days following the date of the mailing of the application to file a written answer with the Commission, admitting or denying liability for the claim. The answer shall state all affirmative defenses with sufficient accuracy and detail that an applicant may be fully informed of the nature of the defense asserted. All answers shall include a summary and categorization of benefits paid to date on the claim. A copy shall be sent to the applicant or, if there is one, to the applicant's attorney by the defendant.

E. When an employer or insurance carrier fails to file an answer within the 30 days provided above, the Commission may enter a default against such employer or insurance carrier. The Commission may then set the matter for hearing, take evidence bearing on the claim, and enter an Order based on the evidence presented. Such defaults may be set aside by following the procedure outlined in the Utah Rules of Civil Procedure. Said default shall apply to the defendant employer or insurance carrier and may not be construed to deprive the Employers' Reinsurance Fund or the Uninsured Employers' Fund of any appropriate defenses.

F. When the answer denies liability solely on the medical aspects of the case, the applicant, through his/her attorney or agent, and the employer or insurance carrier, with the approval of the Commission or its representative, may enter into a stipulated set of facts, which stipulation, together with the medical documents bearing on the case in the Commission's file, may be used in making the final determination of liability.

G. When deemed appropriate, the Commission or its representatives may have a pre-hearing or post-hearing conference.

H. Upon filing of the Answer, the defendant may commence discovery with appropriate sets of interrogatories. Such discovery should focus on the accident event, witnesses, as well as past and present medical care. The defendant shall also be entitled to appropriately signed medical releases to allow gathering of pertinent medical records. The defendant may also require the applicant to submit to a medical examination by a physician of the defendant's choice. Failure of an applicant to comply with such requests may result in the dismissal of a claim or a delay in the scheduling of a hearing.

I. Commission subpoena forms shall be used in all discovery proceedings and shall be signed, unless good cause is shown for a shorter period, at least one week prior to any scheduled hearing.

J. All medical records shall be filed by the employer or its insurance carrier as a single joint exhibit at least one week before the scheduled hearing. Claimant must cooperate and submit all pertinent medical records contained in his/her file to the employer or its insurance carrier for the joint exhibit submission two weeks in advance of a scheduled hearing. Exhibits are to be placed in an indexed binder arranged by care provider in chronological order. Exhibits shall include all relevant treatment records which tend to prove or disprove a fact in issue. Pages shall be numbered consecutively. Hospital nurses' notes, duplicate materials, and other non-relevant materials may not be included.

K. The Administrative Law Judge shall be notified one week in advance of any proceeding when it is anticipated that more than four witnesses will be called, or where it is anticipated that the hearing of the evidence will require more than two hours.

L. Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63-46b-5 or 63-46b-10.

M. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63-46b-12 and Section 34A-1-303. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the Administrative Law Judge shall:

1. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary,

2. Amend or modify the prior Order by a Supplemental order, or

3. Refer the entire case for review under Section 34A-2-801.

If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

N. In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, or as may be otherwise modified by the presiding officer.

O. A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63-46b-13. Any petition for judicial

review of final agency action shall be governed by the provisions of Section 63-46b-14.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where:

1. One or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

(a) Conflicting medical reports of permanent physical impairment which vary more than 5% of the whole person,

(b) Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days, and/or

(c) Medical expenses in controversy amounting to more than $2,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. The Administrative Law Judge may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:

1. The treating physician has failed or refused to give an impairment rating,

2. The employer or doctor considers the claim to be non-industrial, and/or

3. A substantial injustice may occur without such further evaluation.

D. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid out of either the Employers' Reinsurance Fund or the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Testimony.

Compensation for medical panel examination, medical testimony, and preparation by medical panel members at hearings shall be $75 per half hour and shall be $87.50 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants before the Commission in all cases wherein such fees are awarded after April 2, 1999.

A. The concept of a contingency fee is recognized. A retainer in advance of a Commission approved fee is not allowed. Benefits are only deemed generated within the meaning of this rule when they are paid as a result of legal services rendered after an Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the claimant's attorney.

B. By creating this rule, the commission does not intend that an applicant's attorney be paid a fee where the assistance the attorney renders involves only an incidental expenditure of time. For example, no attorney's fee shall be paid when compensation agreements are merely reviewed, simple documents such as Protection of Rights forms are prepared, or an apparent dispute is quickly resolved as a result of oral or written communication.

C. "Benefits" within the meaning of this rule shall be limited to weekly death or disability compensation and accrued interest thereon paid to or on behalf of an applicant pursuant to the terms of Title 34A, Utah Code Annotated.

D. An attorney's fee deducted from the benefits generated shall be awarded for all legal services rendered through final Commission action with the following constraints:

1. 20% of weekly benefits generated for the first $18,000, plus 15% of the weekly benefits generated in excess of $18,000 but not exceeding $36,000, plus 10% of the weekly benefits generated in excess of $36,000.

2. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

3. Not withstanding the above, in no case shall the maximum fee exceed $9,100.

E. After either successfully prosecuting or defending an appeal following final Commission action, an increased attorney's fee shall be awarded amounting to:

1. 25% of the benefits in dispute before the Utah Court of Appeals, plus the amount awarded in part D of this rule, not to exceed $13,300.

2. 30% of the benefits in dispute before the Supreme Court, plus the amount awarded in part D of this rule, plus the amount awarded in part E.1 of this rule, not to exceed $17,500.

F. An attorney's fee shall be deducted from and paid out of the benefits generated and shall be paid directly to the applicant's attorney upon order of the Commission.

G. If a controversy over an attorney's fee develops, the Commission shall have the discretion, pursuant to Section 34A-1-309, and this rule, to award fees or otherwise resolve the dispute by Order delineating the Commission's findings along with the evidence and reasons supporting the decision.

R602-2-5. Settlement Agreements.

A. Statutory authority:

Section 34A-2-420 requires the Commission to review all agreements for the settlement or commutation of claims for workers' compensation or occupational disease benefits and grants the Commission discretion to approve such agreements. The Commission's authority under Section 34A-2-420 applies to all claims arising under the Utah Workers' Compensation Act or Occupational Disease Act, regardless of the date of accident or occupational disease. This rule sets forth the requirements for Commission approval of such agreements.

B. General Considerations:

Settlement agreements may be appropriate in claims of disputed validity or when the parties' interests are served by payment of benefits in a manner different than otherwise

prescribed by the workers' compensation laws. However, settlement agreements must also fulfill the underlying purposes of the workers' compensation laws. Once approved by the Commission, settlement agreements are permanently binding on the parties. The Commission will not approve any proposed settlement that is manifestly unjust.

C. Procedure:

1. Parties interested in a present or potential workers' compensation claim, whether or not an application for hearing has been filed, may submit their settlement agreement to the Commission for review and approval. The Commission may delegate its authority to review and approve such agreements.

2. Each settlement agreement shall be in writing, executed by each party and such party's attorney, if any, and shall include a proposed order for Commission approval of the agreement.

3. Each settlement agreement shall set forth the nature of the claim being settled and what claims are in dispute, if any.

4. Each settlement agreement shall contain a statement that each party understands that the agreement is permanent, binding and constitutes full and final settlement of any right the claimant may otherwise have to future benefits, including medical benefits. The Commission may establish an approved form for complying with the foregoing disclosure requirement.

5. Attorneys' fees shall be allowed as provided by Rule R602-2-4. Each settlement agreement shall describe the amount to be paid to claimant's counsel as attorney's fees and costs, the manner in which such amounts are computed and the method of payment thereof.

6. The settlement agreement may provide for payment of benefits through insurance contract or by other third parties if the Commission determines a) such payment provisions are secure and b) such payment provisions do not relieve the parties of their underlying liability for payments required by the agreement.

7. Upon receipt of a proposed settlement agreement meeting the requirements of this rule, the Commission shall review such proposed agreement:

a. As needed, the Commission may contact the parties and others to obtain further information about the proposed settlement;

b. If the Commission determines that a proposed settlement agreement conforms with this rule, the Commission shall approve such agreement and notify the parties in writing.

c. If the Commission determines that a proposed settlement agreement does not comply with this rule, the Commission shall notify the parties in writing of its reasons for rejecting the proposed agreement.

d. The Commission shall retain a record of its action on all settlement agreements submitted to it for approval.

KEY: workers' compensation, administrative procedure, hearings, settlement
April 5, 1999 34A-1-301 et seq.
Notice of Continuation November 24, 1997 63-46b-1 et seq.

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "First aid" is any one-time treatment, and any follow-up visit for the purpose of observation of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require the attention of a physician. Such one-time treatment, and follow-up visit for the purpose of observation, is considered first aid even though provided by a physician or trained personnel provided that the records comply with R614-1-7.B. and are readily available to the Administrator or his representatives, by direct contact, telephone, or mail.

S. "Hearing" means a proceeding conducted by the commission.

T. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

U. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

V. "Medical treatment" includes treatment administered by a physician or trained personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or trained personnel.

W. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

X. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

Y. "Publish" means publication in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Z. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

AA. "Recordable occupational injuries and illnesses" means any occupational injuries or illnesses which result in:

1. Fatalities, regardless of the time between the injury and death, or the length of the illness;

2. Lost time cases, other than fatalities, that result in lost time; or

3. Nonfatal cases without lost time which result in transfer to another job or termination of employment, or require medical

treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost time case.

BB. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

CC. "Secretary" means the Secretary of the United States Department of Labor.

DD. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

EE. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

FF. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

GG. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

HH. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 1999, edition are incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 1999 edition is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

2. Each employer shall within 12 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901 or one of the individuals on the following personnel list.

TABLE 1

LABOR COMMISSION
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

BAGLEY, Jay W. (Administrator)
Kaysville, Utah 84037

543-1369

ADAMS, William W. Jr.
Park City, Utah 84060
649-4309

BURNS, Tori L.
Salt Lake City, Utah 84102
364-6673

ANDERSON, Neil A.
Kaysville, Utah 84037
544-2791

KING, Daniel L.
Lake Point, Utah 84074
250-6781

3. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational diseases which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

4. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

5. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational diseases resulting in medical treatment, loss of consciousness, loss of work, restriction of work, or transfer to another job.

6. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor Commission or one of its Compliance Officers.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting

and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. Eye wash fountain or a ready source of running tap water, such as drinking fountain or hose with a gentle flow of water should be immediately available for eye irrigation. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational

safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be

subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a

request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent

place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

B. Exceptions to Recordkeeping and Reporting Requirements.

1. Small Employers. An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or accidents; and

b. Obligation to maintain a log of occupational injuries

and illnesses under R614-1-8.C. and to make reports under R614-1-8.N. upon being notified in writing by the Commission's Statistics Section that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

2. Employers who are engaged in farming operations, having 10 or fewer employees are not subject to the Act, including the provisions of this part.

3. Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80.) An employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or serious injury.

b. Obligation to maintain a log of occupational injuries and illnesses under R614-1-8.K. and L. upon being notified in writing by the federal Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses; and

c. Those employers who engage in activities classified as high risk industries (i.e., a real estate establishment engaged in construction activities) must maintain records on the High Risk portions of their operations.

C. Log and summary of occupational injuries and illness.

1. Each employer shall maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment, except that under the circumstances described in R614-1-8.C.2. an employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment. Each employer shall enter all recordable occupational injury and illness on the log and summary as early as practicable but no later than 6 working days after receiving information that a recordable case has occurred. For this purpose, the federal OSHA Form No. 200 or any private equivalent form may be used. OSHA Form No. 200 or its equivalent shall be completed in the detail provided in the form and instructions contained in OSHA Form No. 200. If an equivalent of OSHA Form No. 200 is used, such as a printout from data-processing equipment, the information shall be as readable and comprehensible to a person not familiar with the data-processing equipment as the OSHA Form No. 200 itself.

2. Any employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

a. There is available at the place where the log and summary is maintained sufficient information to complete the log to a date within 6 working days after receiving information that a recordable case has occurred, as required by R614-1-8.C.

b. At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

D. Period covered.

Records shall be established on a calendar year basis.

E. Supplementary record.

In addition to the log and summary of occupational injuries and illnesses provided for under R614-1-8.C.1., each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 101. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 101. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 101 shall be used or the necessary information shall be otherwise maintained.

F. Annual Summary.

1. Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the form OSHA Form No. 200 and the following information from that form: calendar year covered, company name, establishment address, certification signature, title, and date. An OSHA Form No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered in the totals line, and the form must be posted.

2. The summary shall be completed by February 1 beginning with calendar year 1979. The summary of 1977 calendar year's occupational injuries and illnesses shall be posted on OSHA form No. 102.

3. Each employer or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the annual summary certifying that the annual summary is true and complete.

4. Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under R614-1-7.B.1. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

a. Failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to Sections 34A-6-302 and 34A-6-307 of the Act.

G. Retention of records.

1. Records provided for in R614-1-8.A.,E., and F.

(including OSHA Form No. 200 and its predecessor OSHA Forms No. 100 and No. 102) shall be retained in each establishment for 5 years following the end of the year to which they relate.

2. Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

H. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

I. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

J. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

K. Change of ownership.

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned or operated such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this Part. These records shall be retained at each establishment to which they relate, for the period or remainder thereof, required under R614-1-8.G.

L. Petitions for record-keeping exceptions.

1. Submission of petition. Any employer who wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in R614-1-8.L.3. the Bureau of Labor Statistics of the U.S. Department of Labor.

2. Opportunity for comment. Affected employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the Administrator within 10 working days following the receipt of notice under R614-1-8.L.3.e.

3. Contents of petition. A petition filed under R614-1-8.L.1. shall include:

a. The name and address of the applicant;

b. The address of the places or employment involved.

c. Specifications of the reasons for seeking relief;

d. A description of the different record-keeping procedures which are proposed by the applicant;

e. A statement that the applicant has informed his affected employees of the petition by giving a copy thereof to them or to their authorized representative and by posting a statement giving a summary of the petition and by other appropriate means. A statement posted pursuant to this subparagraph shall be posted in each establishment in the same manner that notices are required to be posted under R614-1-7.B. The applicant shall also state that he has informed his affected employees of their rights under R614-1-8.L.2.

f. In the event an employer has more than one establishment he shall submit a list of the locations and the number of establishments in the state.

4. Additional notice, conferences.

a. In addition to the actual notice provided for in R614-1-8.L.3.e., the Administrator may provide such additional notice of the petition as he may deem appropriate.

b. The Administrator may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.

5. Action. After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the Administrator finds that the alternative procedure proposed will not hamper or interfere with the purposes of the

Act and will provide equivalent information, he may grant the petition subject to such conditions as he may determine appropriate.

6. Publication. Whenever any relief is granted to an applicant under this Act, notice of such relief, and the reasons therefore, shall be published in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act. The U.S. Department of Labor shall have been consulted and approval given prior to the granting of relief by the Administrator.

7. Revocation. Whenever any relief under this rule is sought to be revoked for any failure to comply with the conditions thereof, and opportunity for informal hearing or conference shall be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall:

a. Be notified in writing of the facts or conduct which may warrant the action; and

b. Be given an opportunity to demonstrate or achieve compliance.

8. Compliance after submission of a petition or any delay by the Administrator, in acting upon a petition shall not relieve any employer from any obligation to comply with this Part. However, the Administrator shall give notice of the denial of any petition within a reasonable time.

M. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

N. Duties of employers.

1. Upon receipt of an Occupational Injuries and Illnesses Survey Form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

2. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of R614-1-8.C., E., and G. with respect to such employees by:

a. Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

b. Having the address and telephone number of the central place available at each work-site; and

c. Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a

multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63, Chapter 46b, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong.

Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63, Chapter 46a, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable

principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably

employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized

persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable

employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and

to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees

and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety

of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety
July 2, 1999 **34A-6**

R651. Natural Resources, Parks and Recreation.
R651-101. Adjudicative Proceedings.
R651-101-1. Authority and Effective Date.

(a) These rules establish and govern the administrative proceedings before the Division or Director, respectively, as required by Section 63-46b-5.

(b) These rules govern all adjudicative proceedings commenced on or after January 1, 1993.

R651-101-2. Definitions.

These definitions are in addition to definitions in Section 63-46b-2.

(a) "Adjudicative proceeding" means a Division action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Division actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend the authority, right, permit or license; and judicial review of all such actions. Any matters not governed by Chapter 63-46b shall not be included within this definition.

(b) "Board" means the Board of Parks and Recreation.

(c) "Director" means the Director of the Division.

(d) "Division" means the Division of Parks and Recreation and (as the context requires) its officers, employees, or agents.

(e) "Party" means the Division, Director or other person commencing an adjudicative proceeding, all respondents, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

(f) "Presiding officer" means the Director or an individual or body of individuals designated by the Director, rules or statute to conduct a particular adjudicative proceeding.

(g) "Respondent" means any person against whom an adjudicative proceeding is initiated, whether by the Division, Director or any other person.

The meaning of any other words used shall be as defined in Chapters 41-22, 63-11, 73-18, 73-18a or 73-18b; or any rules subsequently promulgated.

R651-101-3. Designation of Informal Proceedings.

All adjudicative proceedings of the Division or Director are hereby designated as informal proceedings.

R651-101-4. Construction.

(a) These rules shall be construed in accordance with the Utah Administrative Procedures Act, Chapter 63-46b, and supersede any conflicting provision of procedural rules promulgated by the Board or Division.

(b) These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the Division or Director.

(c) Deviation from Rules

For good cause, and where no party will be prejudiced, the Division or Director may permit a deviation from these rules except where precluded by statute.

(d) Computation of Time

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

R651-101-5. Commencement of Proceedings.

(a) Proceedings Commenced by the Division or Director.

All informal adjudicative proceedings commenced by the Division or Director, shall be initiated as provided by applicable statute, Division rules, and Section 63-46b-3(2)(a).

(b) Proceedings Commenced by Persons Other than the Division or Director.

(1) All informal adjudicative proceedings commenced by persons other than the Division or Director shall be commenced by either completing prepared forms requesting agency action on file at the Division or, if no such forms are required to initiate a particular proceeding, by submitting in writing a request for agency action in accordance with Subsection 63-46b-3(2)(c).

R651-101-6. Pleadings.

(a) Pleadings before the Presiding Officer for administrative hearings shall consist of a notice of agency action, a request for agency action, responses and motions together with affidavits, briefs, memoranda of law and fact in support thereof.

(b) Motions may be submitted for the Presiding Officer's consideration on either written or oral argument and the filing of affidavits in support or contravention thereof may be permitted. Any written motion shall be accompanied by a short supporting memorandum of fact and law.

(c) Amendments to Pleadings

The Presiding Officer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.

R651-101-7. Hearings.

(a) The Division, Director or a Presiding Officer shall hold a hearing if a hearing is required by statute, or if a hearing is permitted by statute and is requested by a party within 30 days of the commencement of the adjudicative proceeding. The Division, Director or a Presiding Officer may at their discretion initiate a hearing to determine matters within their authority.

(b) Notice of the hearing will be served on all parties by regular mail at least ten (10) days prior to the hearing.

(c) If no hearing is held in a particular adjudicative proceeding, the Presiding Officer shall within a reasonable time issue a decision pursuant to Subsection 63-46b-5(1)(i).

R651-101-8. Intervention.

Intervention is prohibited except where a federal statute or rule requires that a state permit intervention.

R651-101-9. Pre-hearing Procedure.

The Presiding Officer may, upon written notice to all parties of record, hold a pre-hearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof,

arranging for the exchange of proposed exhibits, and agreeing to such other matters as may expedite the orderly conduct of the proceedings or the settlement thereof.

R651-101-10. Continuance.

If application is made to the Presiding Officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties the Presiding Officer may grant a continuance of the hearing.

R651-101-11. Parties to a Hearing.

(a) All persons defined as a "party" are entitled to participate in hearings before the Division or Director.

(b) All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

R651-101-12. Appearances and Representation.

(a) Taking Appearances

Parties shall enter their appearances at the beginning of a hearing or at such time as may be designated by the Presiding Officer by giving their names and addresses and stating their positions or interests in the proceeding.

(b) Representation of Parties

(1) An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

(2) Any party may be represented by an attorney licensed to practice in the State of Utah.

R651-101-13. Failure to Appeal--Default.

When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the Presiding Officer may continue the matter or may enter an order of default as provided by Section 63-46b-11 or may proceed to hear the matter in the absence of the defaulting party.

R651-101-14. Discovery, Testimony, Evidence and Argument.

(a) Discovery is prohibited and the Division or Director may not issue subpoenas or other discovery orders.

(b) All parties shall have access to information contained in the Division's files of public record and to all materials and information gathered in any investigation, to the extent permitted by law.

(c) Testimony

At the hearing, the Presiding Officer shall accept oral or written testimony from any party. Further, the Presiding Officer shall have the right to question and examine any witnesses called to present testimony at a hearing. The testimony and statements which are received at hearings may, but need not, be under oath.

(d) Order of Presentation of Evidence

Unless otherwise directed by the Presiding Officer at a hearing, the presentation of evidence shall be as follows:

(1) When agency action is initiated by a person other than the Division or Director:

(i) person initiating the action,

(ii) respondent (if any), then

(iii) Division staff.

(2) When the Division or Director initiates agency action:

(i) Division staff,

(ii) respondent, then

(ii) other interested parties (if any).

During any hearing a party may offer rebuttal evidence.

(e) Rules of Evidence

A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence shall be excluded. The weight to be given to evidence shall be determined by the Presiding Officer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent man in the conduct of their affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible in a judicial proceeding.

(f) Documentary Evidence

Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

(g) Official Notice

The Presiding Officer may take official notice of the following matters:

(1) Rules, regulations, official reports, written decisions, orders or policies of the Board, Division or any other regulatory agency, state or federal;

(2) Official documents introduced into the record by proper reference; provided, however such documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

(3) Matters of common knowledge and generally recognized technical or scientific facts within the Division's or Director's specialized knowledge and of any factual information which the Presiding Officer may have gathered from a field inspection.

(h) Oral Argument and Memoranda

Upon the conclusion of the taking of evidence, the Presiding Officer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the Presiding Officer.

R651-101-15. Record of Hearing.

(a) A record of any hearing shall be recorded at the Division's expense. When a record is made by the Division, it shall be done by means of an automatic recording device. Any party, at his own expense, may have a reporter approved by the Division prepare a transcript from the record of the hearing.

(b) If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the Division free of charge. This transcript shall be available at the Division office to any party to the hearing.

R651-101-16. Decisions and Orders.

(a) Report and Order

After the Presiding Officer has reached a final decision upon any adjudicative proceeding, he shall make and enter a signed order in writing that states the decision, the reasons for the decision, a notice of the rights of the parties to request Division or Director review reconsideration or judicial review, as appropriate, and notice of the time limits for filing a request for review, reconsideration or a court appeal. The order shall be based on the facts appearing in any of the Division's files and on the facts presented in evidence at any hearings.

(b) Service of Decisions

A copy of the Presiding Officer's order shall be promptly mailed by regular mail to each of the parties.

R651-101-17. Agency Review.

Who may file

(a) Where the agency action is taken by a Presiding Officer other than the Director, any aggrieved party may seek review of an order or decision, to the Director as the case may be, by following the procedures of Section 63-46b-12 and the following additional rules. Such review shall be considered a prerequisite for judicial review. The requests for review shall be to the Director, as provided by law.

(b) Filing of Request for Review.

(1) Requests for review of agency action within the statutory or regulatory purview of the Division shall be filed with the Director within ten days after the issuance of the order.

(c) Action on the Request for Review

(1) Where the request for review is to the Director, the request shall be reviewed by the Director.

(2) Unless otherwise provided by law, all reviews shall be based on the record before the Presiding Officer. In order to assist in review, parties, upon request, may be allowed to file briefs or other documents explaining their position.

(3) Parties shall not be entitled to a hearing on review, except as allowed by law; provided, however, that the Director may, in his discretion, grant a hearing for their benefit to assist them in the review. Notice of any hearing shall be mailed to all parties at least 10 days prior to the hearing.

(d) Action on Review

Within a reasonable time after the filing of any response, other filings, or after any hearing, the Director shall issue a written order on review which shall be signed by the Director and shall be mailed to each party. The order shall contain the items, findings, conclusions and notices more fully set forth in Subsection 63-46b-12(6)(c).

R651-101-18. Request for Reconsideration.

(a) Who may file

Within ten days after the date that an order on review is issued, any aggrieved party may file a request for reconsideration by following the procedures of Section 63-46b-13 and the following additional rules. Such a request is not a prerequisite for judicial review.

(b) Action on the Request

The Director shall issue a written order granting or denying the request for reconsideration. If such an order is not issued within 20 days after the filing of the request, the request for rehearing shall be considered denied. Any order granting rehearing shall be strictly limited to the matter specified in the order.

R651-101-18. Judicial Review.

Any party aggrieved by final agency action may obtain judicial review of such action pursuant to sections 63-46b-14 and 15, except where judicial review is expressly prohibited by statute. A petition for judicial review shall be filed within 30 days after the date that the order constituting final agency action is issued.

R651-101-20. Declaratory Orders.

An interested person may file a request for agency action requesting that the Division or Director issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the Board, Division or Director pursuant to Section 63-46b-21. A request for a declaratory order shall set forth in detail the specific statute, rule, or order which is in question, the specific facts for which the order is requested, the manner in which the person making the request claims the statute, rule, or order may affect him, and the specific questions for which a declaratory order is requested.

The Division or Director may in their discretion decline to issue declaratory orders where they deem the facts presented to be conjectural, or where the public interest would best be served by not issuing such order.

R651-101-21. Emergency Orders.

The Division or Director may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63-46b-20.

KEY: administrative procedures

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	63-11
	73-18
	73-18a
	73-18b

R653. Natural Resources, Water Resources.
R653-7. Administrative Procedures for Informal Proceedings.
R653-7-1. Authority and Effective Date.

This rule establishes and governs administrative proceedings before the Utah Division of Water Resources and the Utah Board of Water Resources, respectively, as required by Sections 63-46b-1, et seq.

R653-7-2. Designation of Informal Proceedings.

All adjudicative proceedings of the Division of Water Resources and the Board of Water Resources are hereby designated as informal.

R653-7-3. Definitions.

1. Terms used in this rule are defined in Section 63-46b-2.

2. In addition:

a. "Division" means the Utah Division of Water Resources.

b. "Board" means the Utah Board of Water Resources.

c. "Director" means the Director of the Division of Water Resources.

d. "Staff" means the staff of the Division of Water Resources.

R653-7-4. Construction -- Computation of Time.

1. This rule shall be construed in accordance with the Utah Administrative Procedures Act and supersedes any conflicting provision of procedural rules promulgated by the Division or Board.

2. This rule shall be liberally construed to secure a just and speedy determination of all issues presented to the Division or Board.

3. For good cause, and where no party is prejudiced, the Division or Board may permit deviation from this rule except where precluded by statute.

The time within which any act shall be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

R653-7-5. Commencement of Proceedings.

1. All informal adjudicative proceedings commenced by the Division or Board shall be initiated as provided by Subsection 63-46b-3.

2. All informal adjudicative proceedings commenced by a person other than the Division or Board shall be commenced by either completing prepared forms on file at the Division requesting agency action, or by submitting in writing a request for agency action in accordance with Subsection 63-46b-3.

R653-7-6. Answer or Responsive Pleading.

After a notice of agency action or a request for agency action has been issued or filed, any party may file an answer or response.

R653-7-7. Amendments to Pleadings.

The Presiding Officer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that documents which are governed by specific statutory provisions shall be amended only as provided by statute.

R653-7-8. Intervention.

Intervention is prohibited except as otherwise required by a federal or State statute.

R653-7-9. Hearings.

1. The Division, Board or a Presiding Officer shall hold a hearing if a hearing is required by statute, or if a hearing is permitted by statute and is requested by a party within 30 days of the commencement of the adjudicative proceeding. The Division, Board or a Presiding Officer may at their discretion initiate a hearing to determine matters within their authority.

2. Notice of the hearing will be served on all parties by regular mail at least ten days prior to the hearing.

3. If no hearing is held in a particular adjudicative proceeding, the Presiding Officer shall issue a decision within a reasonable time.

R653-7-10. Pre-Hearing Procedure.

The Presiding Officer may, upon written notice to all parties of record, hold a pre-hearing conference for purposes of formulating or simplifying the issues, obtaining admissions of fact and documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement thereof.

R653-7-11. Continuance.

If application is made to the Presiding Officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties the Presiding Officer may grant a continuance of the hearing.

R653-7-12. Parties to a Hearing.

1. All persons defined as a "party" are entitled to participate in hearings before the Division or Board.

2. All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

R653-7-13. Appearances and Representation.

1. Parties shall enter their appearances at the beginning of a hearing or at a time as may be designated by the Presiding Officer by giving their names and addresses and stating their positions or interests in the proceeding.

2. An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

3. Any party may be represented by an attorney licensed to practice in the State of Utah.

R653-7-14. Failure to Appear--Default.

When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the Presiding Officer may continue the matter or may

enter an order of default as provided by Section 63-46b-11, or may proceed to hear the matter in the absence of the defaulting party.

R653-7-15. Discovery, Testimony, Evidence and Argument.

1. Discovery is prohibited and the Division or Board may not issue subpoenas or other discovery orders.

2. All parties shall have access to non-confidential and non-privileged information contained in Division and Board files that are public record and to all materials and information gathered in any investigation, to the extent permitted by law.

3. At any hearing, the Presiding Officer shall accept oral or written testimony from any party. Further, the Presiding Officer shall have the right to question and examine any witness called to present testimony. Testimony and statements received at hearings may be under oath.

4. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence may be excluded. The weight to be given to evidence shall be determined by the Presiding Officer. Hearsay evidence may not be excluded solely because it is hearsay.

5. Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

6. The Presiding Officer may take official notice of the following matters:

a. Rules, guidelines, official reports, written decisions, orders or policies of the Board of Water Resources, Division of Water Resources and any other regulatory agency, State or federal;

b. Official documents introduced into the record by proper reference; provided, the documents shall be made available so that parties to the hearing may examine the documents and present rebuttal testimony if they so desire; and

c. Matters of common knowledge and generally-recognized technical or scientific facts within the Division's or Board's specialized knowledge and of any factual information which the Presiding Officer may have gathered from a field inspection.

7. Upon the conclusion of the taking of evidence, the Presiding Officer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the Presiding Officer.

R653-7-16. Record of Hearing.

1. A record of any hearing shall be recorded at the Division's or Board's expense. When a record is made by the Division or Board, it shall be done by means of an automatic recording device. Any party, at his own expense, may have a reporter approved by the Division or Board prepare a transcript from the record of the hearing.

2. If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the Division or Board free of charge. This transcript shall be available at the Division office to any party to the hearing.

R653-7-17. Decisions and Orders.

1. After the Presiding Officer has reached a final decision upon any adjudicative proceeding, he shall make and enter a signed order in writing that states:

a. the decision;

b. the reasons for the decision;

c. a notice of the rights of the parties to request Division or Board review, reconsideration or judicial review, as appropriate; and

d. notice of time limits for filing a request for review, reconsideration or court appeal.

2. The order shall be based on facts appearing in any of the Division's files or records and on facts presented in evidence at any hearings.

3. A copy of the Presiding Officer's order shall be mailed by regular mail to each of the parties.

R653-7-18. Request for Reconsideration.

1. Any aggrieved party may file a request for reconsideration by following the procedures of Section 63-46b-13. A request is not a prerequisite for judicial review.

2. The Division Director or Board shall issue a written order granting or denying the request for reconsideration. If an order is not issued within 20 days after the filing of a request, the request for rehearing shall be considered denied. Any order granting rehearing shall be strictly limited to the matter specified in the order.

R653-7-19. Judicial Review.

Any party aggrieved by final agency action may obtain judicial review of the action pursuant to Sections 63-46b-14 and 15, except where judicial review is not permitted. A petition for judicial review shall be filed within 30 days after the date that the order constituting final agency action is issued.

R653-7-20. Declaratory Orders.

1. Any interested person may file a request for agency action requesting that the Division or Board issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the Division or Board pursuant to Section 63-46b-21.

2. A request for a declaratory order shall be filed in accordance with Section 63-46b-21 which request commences an informal adjudicative proceeding and shall set forth in detail:

a. the specific statute, rule, or order which is in question;

b. the specific facts for which the order is requested;

c. the manner in which the person making the request claims the statute, rule, or order may affect him; and

d. the specific question for which a declaratory order is requested.

3. The Division or Board may in their discretion decline to issue declaratory orders where the facts presented are deemed to be conjectural, abstract, insubstantial or where the public interest would best be served by not issuing an order.

R653-7-21. Emergency Orders.

The Division or Board may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63-46b-20.

KEY: administrative procedure
February 18, 1998 **63-46b-1**
Notice of Continuation December 22, 1997

R655. Natural Resources, Water Rights.
R655-4. Water Well Drillers.
R655-4-1. Purpose.

These rules are promulgated pursuant to Section 73-3-25. The purpose of these rules is to assist in the orderly development of underground water, insure that minimum construction standards are achieved in the drilling and repairing of water wells, prevent pollution of aquifers within the state, prevent wasting of water from flowing wells, obtain accurate records of well drilling operations, and insure compliance with the state engineer's authority for appropriating water.

1.1 Minimum Acceptable Standards.

Construction standards outlined in this document are meant to serve as minimum acceptable standards. In some cases, more stringent standards would be called for if compliance with these rules would not result in a well which is free from pollution, or would be a source of subsurface leakage, or would result in contamination of the groundwater resource.

1.2 Monitor Wells 30 Feet or Deeper.

To provide for protection of the water resources of the state and obtain valuable information on the aquifers of the state, Section 73-3-22 and the rules have been amended to include the drilling of water monitoring wells which are completed to depths of 30 feet or greater below natural ground surface.

1.3 Heating or Cooling Exchange Wells.

Wells or boreholes utilized for heat exchange or thermal heating, which are 30 feet or greater in depth and encounter formations containing groundwater, must be drilled by a currently licensed driller and the owner or applicant must have an approved application for that specific purpose. Wells or boreholes installed for heat or thermal exchange process must comply with the minimum construction standards governed by these rules. If a separate well or borehole is required for re-injection purposes, it must also comply with these construction standards and the groundwater must be injected into the same water bearing zones as from which it is initially withdrawn. The quality and quantity of groundwater shall not be diminished or degraded upon re-injection.

1.4 Cathodic Protection Wells.

A cathodic protection well is a well constructed for the purpose of installing deep anodes to minimize or prevent electrolytic corrosive action of metallic structures installed below ground surface, such as pipe lines, transmission lines, well casings, storage tanks, or pilings. Cathodic protection wells are constructed in a similar manner to production water wells and may penetrate water bearing zones, and care must be taken to insure protection of groundwater resources. Therefore, all construction standards outlined in these rules must be adhered to when constructing cathodic protection wells with the following additional standards being met:

a) The conductive backfill material placed around the anodes within the borehole and the non-conductive backfill placed above the anodes must be non-toxic and free of contaminants.

b) The annular space surrounding the gas dissipating vent pipe or casing must be a minimum of 4" larger in diameter and must be sealed in accordance with Section R655-4-8.2.

c) The well must be constructed in a manner to prevent commingling of water from different aquifers, cross contamination, or degradation of known potable water sources.

d) The well must be constructed by a currently licensed well driller as required by these rules. Figure 5, dated December 15, 1994, refers to the construction requirements of a typical cathodic protection well installation which is incorporated by reference to these rules.

1.5 Recharge and Recovery Wells.

Any well drilled under the provisions of Section 73-3b-101, "Groundwater Recharge and Recovery Act" shall be constructed in a manner consistent with these rules and shall be drilled by a currently licensed driller.

1.6 Public Water System Supply Wells.

Public water system supply wells are subject to additional requirements established by the Drinking Water Board, pursuant to their authority under Subsection 19-4-104(1)(a) and the rules established under Section R309-113-1. The State of Utah, Department of Environmental Quality (DEQ), Division of Drinking Water (DDW), may be contacted for additional information regarding public water system supply wells. Plans and specifications for a public water system supply well must be reviewed and approved by the Division of Drinking Water before the well is drilled.

1.7 Beneficial Use or Utilization of Groundwater.

Both monitor and production wells constructed to a final depth of less than 30 feet below ground level shall not be governed by these rules. However, diversion and beneficial use of groundwater from wells less than 30 feet deep shall require approval through the appropriation procedures and policies of the state engineer and Section 73-3-1 and Section 73-3-2.

1.8 Geothermal Well Exclusion.

It is not intended that these rules govern the drilling of geothermal wells. Anyone contemplating the drilling of geothermal wells is subject to Section 73-22-1, "Utah Geothermal Resource Conservation Act" and the rules promulgated pursuant to that section. The State Engineer's Office can be contacted for information regarding drilling of geothermal wells.

1.9 Embankment or Foundation Borehole Exclusion.

It is not intended that the following rules govern the drilling of temporary exploratory holes that are drilled to obtain information on the subsurface strata on which an embankment or foundation is to be placed, or an area proposed to be used as a potential source of material for construction.

1.10 Wells for Instrumentation or Structural Performance Exclusion.

Wells or boreholes constructed to monitor man-made structures, house instrumentation to monitor structural performance, or dissipate hydraulic pressures on structures are exempt from the following rules, provided that the wells or boreholes do not interfere with established aquifers, or their primary purpose is not for monitoring water quality.

1.11 Earth Coupled Heat Exchange Well Exclusion.

Wells or boreholes which are drilled or otherwise constructed into nonwater bearing zones or which are less than 30 feet in depth, for the purpose of utilizing heat from the surrounding earth, shall not be governed by these rules. Geotechnical borings drilled for Preliminary Site Assessment (PSA) or to obtain lithologic data, which are not installed for the purpose of utilizing or monitoring groundwater also are not

governed by these rules.

1.12 Administrative Procedures for Informal Proceedings.

All administrative procedures involving applications, approvals, hearings, notices, revocations, orders and their judicial review, and all other administrative procedures required or allowed by these rules are governed by R655-6, Administrative Procedures for Informal Proceedings Before the Division of Water Rights.

R655-4-2. Definitions.

2.1 Abandoned Well--a well whose purpose and use have been permanently discontinued or a well that is in a state of disrepair and its intended purpose cannot be reasonably achieved. A well can be abandoned only after being properly sealed according to the requirements of Section R655-4-12.

2.2 American National Standards Institute (ANSI)--a nationally recognized testing laboratory which certifies building products and adopts standards including those for steel and plastic (PVC) casing utilized in the well drilling industry. ANSI standards are often adopted for use by ASTM and AWWA. Current information on standards can be obtained from: ANSI, 1430 Broadway, New York, NY 10018.

2.3 American Society for Testing and Materials (ASTM)--an independent organization concerned with the development of standards on characteristics and performance of materials, products and systems including those utilized in the well drilling industry. Information may be obtained from: ASTM, 1916 Race Street, Philadelphia, PA 19013.

2.4 American Water Works Association (AWWA)--An international association which publishes standards intended to represent a consensus of the water supply industry that the product or procedure described in the standard will provide satisfactory service or results. Information may be obtained from: AWWA, 6666 West Quincy Avenue, Denver CO 80235.

2.5 Annular Space--the space between the inner well casing and the outer well casing or borehole.

2.6 Aquifer--a porous underground formation yielding usable amounts of withdrawable water.

2.7 Artesian Aquifer--a water-bearing formation which contains underground water under sufficient pressure to rise above the zone of saturation.

2.8 Artesian Well--a well where the water level rises appreciably above the zone of saturation.

2.9 Bentonite--a highly plastic, highly absorbent, colloidal clay composed largely of mineral montmorillonite.

2.10 Casing--a tubular retaining and sealing structure that is installed in the borehole to maintain the well opening.

2.11 Clay-Slurry--a mixture of bentonite, other expansive clays, or fine-grained material and water, in a ratio of not less than 8 pounds of bentonite or expansive clay per gallon of water. The slurry must be composed of not less than 50% expansive clay with the maximum size of the remaining portion not exceeding that of coarse sand.

2.12 Consolidated Formation--bedrock consisting of sedimentary, igneous, or metamorphic rock. A consolidated impermeable formation shall have sufficient thickness to form a geologic barrier in the vicinity of the well in order to be incorporated in the surface grout seal of a well.

2.13 Drawdown--the difference in elevation between the static and pumping water levels.

2.14 Gravel Packed Well--a well in which filter material is placed in the annular space to increase the effective diameter of the well and to prevent fine-grained sediments from entering the well.

2.15 Grout--a fluid mixture of portland cement and water of a consistency that can be forced through a pipe and placed as required. Various additives, of sand, bentonite, and hydrated lime, may be included in the mixture to meet different requirements.

2.16 Monitor Well--a well as defined in Section R655-4-2.28 which is constructed for the purpose of determining water levels, monitoring chemical, bacteriological, radiological, or other physical properties of ground water or vadose zone water. Monitor wells, for the purpose of these rules, less than 30 feet deep need not be constructed by a licensed well driller unless specifically directed by the state engineer. Additionally, official well driller's reports or well logs are not required for monitor wells completed to a depth of less than 30 feet below natural ground surface.

2.17 National Sanitation Foundation (NSF)--a voluntary third party consensus standards and testing entity established under agreement with the U.S. Environmental Protection Agency (EPA) to develop testing and adopt standards and certification programs for all direct and indirect drinking water additives and products. Information may be obtained from: NSF, 3475 Plymouth Road, PO Box 1468, Ann Arbor, Michigan 48106.

2.18 Neat Cement Grout--cement conforming to the American Society for Testing and Materials (ASTM) Standard C150 (standard specification of Portland cement), with no more than six gallons of water per 94 pound sack of cement.

2.19 Operator--a drilling-machine operator is an individual who is employed by a driller holding a current Utah Well Driller's license for the purpose of constructing wells using equipment owned by the licensee.

2.20 Provisional Well--Authorization granted by the state engineer to drill under a pending, unapproved water right or exchange, or for the purpose of determining characteristics of an aquifer, or the existence of a useable groundwater source. Provisional well approvals are granted by the state engineer on a case by case basis upon review of hydrogeologic conditions, existing rights in the area, potential for interference and current appropriation policy and the provisions of Section 73-3-1 and Section 73-3-2.

2.21 Public Water System Supply Well--a well, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least 15 service connections or regularly serves an average of at least 25 individuals daily for at least 60 days out of the year.

2.22 State Engineer--state engineer means the Director of the Utah Division of Water Rights or any employee of the Division of Water Rights designated by the state engineer to act in administering these rules.

2.23 Static Level--stabilized water level in a nonpumped well beyond the area of influence of any pumping well.

2.24 Tremie Pipe--a device that carries materials to a designated depth in a drill hole or annular space.

2.25 Unconsolidated Formation--loose, soft, incoherent

rock material composed of sedimentary, igneous, or metamorphic rock which includes sand, gravel, and mixtures of sand and gravel. These formations are widely distributed and can possess good storage and water transmissivity characteristics.

2.26 Vadose Zone--the zone containing water under less than atmospheric pressure, including soil water, intermediate vadose water and capillary water. The zone extends from land surface to the zone of saturation or water table.

2.27 Valid Authorization to Drill--shall consist of any of the following:

a) An approved application to appropriate.

b) A "provisional well" approval letter.

c) An approved permanent change application.

d) An approved exchange application.

e) An approved temporary change application.

f) An approved application to renovate, replace, or deepen an existing well.

g) An approved "monitor well" letter.

h) Any letter or document from the state engineer directing or authorizing a well to be drilled or work to be done on a well.

Most authorizations to drill expire after predetermined periods of time as specified by the state engineer. Items a) through f) of Section R655.4-2.27, allow the applicant to contract with a well driller to drill or renovate exactly one well at each point of diversion listed on the approved form. When the work contemplated is completed or abandoned, the permission to drill terminates. An approved provisional well or monitor well letter is a special case permitting exploratory drilling but allowing only enough water to be diverted from the approved points to determine the characteristics of the ground water source or to monitor groundwater as defined in Section R655-4-2.16.

2.28 Well--a horizontal or vertical excavation or opening into the ground made by digging, boring, drilling, jetting, or driving or any other artificial method for utilizing or monitoring underground waters.

2.29 Well Driller--any person duly licensed by the state engineer that constructs a well for compensation or otherwise.

2.30 Well Drilling--the act of constructing, repairing, renovating, or deepening a well, including all incidental work.

R655-4-3. Well Driller's Licenses.

3.1 General.

Section 7-3-25 requires every person that constructs a well in Utah to obtain an annual well driller's license from the state engineer and to file with him a bond in the penal sum of $5000 which is payable to the Office of the State Engineer and to comply with the law and rules for well drillers. Applications for well driller's licenses shall be made on forms furnished by the state engineer. All licenses expire at 12 midnight on the 31st day of December following their issuance and are not transferable.

3.2 Application for License.

Before a Utah well driller's license will be issued, the applicant must do all of the following:

3.2.1 Apply to the state engineer on forms provided for that purpose, including documentation of prior well drilling experience.

3.2.2 Pay an initial application fee, which amount has been submitted to and approved by the legislature as part of the annual appropriations request as stated in Subsection 63-38-3-(2)(a). Current initial application and renewal fees for licensing are available from the state engineer.

3.2.3 File a bond in the penal sum of $5,000 with the state engineer, which is conditioned upon proper compliance with the law and these rules and effective for the calendar year in which the license is to be issued. The bond shall stipulate the obligee as the "Office of the State Engineer".

3.2.4 Obtain a score of at least 70% on the written and oral examination administered by the state engineer to test the applicant's knowledge of:

a) Utah Water Law as it pertains to underground water;

b) Property description by section, township, and range;

c) Geologic formations and proper names used in describing underground material types;

d) Groundwater geology and the occurrence and movement of groundwater;

e) The rules for water well drillers;

f) The minimum standards for well construction determined by the state engineer;

g) The proper construction methods and techniques for the various types of well drilling rigs, equipment, and hardware the applicant proposes to use to construct wells in the state.

3.2.5 If the applicant fails to obtain the minimum passing score on the written and oral examination he may make re-application to the state engineer for a license and re-examination 90 days from the date of the previous application.

3.2.6 Applicants shall be 21 years of age or older.

3.2.7 The state engineer may issue a restricted, conditional or limited license to an applicant based on prior drilling experience, drilling performance and compliance with established rules and construction standards for a time period prescribed by the state engineer.

3.3 Operator Registration Requirements

3.3.1 An operator may become registered with the State Engineer's Office in order to substantiate claims of experience when applying for a well driller's license at a future date.

3.3.2 An operator may become registered with the State Engineer's Office by doing all of the following:

3.3.2.1 Filing an application with the state engineer on forms provided for that purpose.

3.3.2.2 Obtaining a score of at least 70% on a written and oral examination to test the applicant's knowledge of:

a) Property description by section, township, and range;

b) Geologic material and proper names used in describing underground material types;

c) The rules for water well drillers; and,

d) The minimum standards for well construction as determined by the state engineer.

3.3.2.3 An operator must be under the direct supervision of a well driller holding a current Utah well driller's license. The licensee need not be continually present at the drilling site but must provide direct supervision on a regular and frequent basis as the work progresses.

3.4 Drilling Without a License. Any person found to be drilling a well without a valid well driller's license will be ordered to cease and desist by the state engineer. The cease and

desist order may be made verbally but must be followed by a written order. The order may be posted at an unattended well or drilling site. A person found drilling without a license will be prosecuted under Section 73-3-26. (See Section R655-4-5.8)

R655-4-4. General Procedural Requirements.

4.1 Continuation of License.

All drillers, as a condition of the continuation of their license to drill wells in Utah shall do all of the following:

4.1.1 Prior to commencing any work on a well, file with the state engineer written notice of that intention on a "start" card furnished by the state engineer. For any approval to drill authorized after January 1, 1993 the start card will be obtained from the applicant or well owner and must be submitted to the state engineer prior to the beginning of well construction. For any approval to drill prior to January 1, 1993, the driller must submit a start card provided by the state engineer prior to the beginning of well construction. The "start" card shall include the following:

a) The date on which it is proposed to commence work;

b) The projected completion date;

c) The nature of the work to be performed;

d) The name of the party for whom the well is to be drilled, replaced or renovated.

e) The currently valid authorization to drill, approved by the state engineer as described in Section R655-4-2.27.

f) The diameter of casing to be used;

g) The location of the well by section, township and range;

h) The card shall be signed and dated by the licensed well driller.

When a single authorization is given to drill wells at more than one point of diversion, a start card shall be submitted for each location to be drilled. For convenience, the start card information may be submitted by telephone or via telephone facsimile to the state engineer prior to the beginning of well construction. However, the start card itself must always be mailed or otherwise submitted to the state engineer.

4.1.2 Comply with the minimum well construction standards as adopted by the state engineer and included in these rules.

4.1.3 Have a qualified operator or licensee at the well site at all times during the actual work of construction, development or abandonment of the well. All persons operating under a well driller's license shall be employees of the well driller and use the licensed well driller's equipment. All wells, when unattended during construction or renovation shall be securely covered in a manner to prevent debris or contamination from entering the well or borehole.

4.1.4 Not allow any person to engage in the well drilling business under the authorization of their license without prior review and written consent of the state engineer.

4.2 License Number Displayed.

The well driller's license number, assigned by the state engineer, must be prominently displayed on every well drilling rig operated in the state.

4.3 Official Well Drillers Report (Well Log).

Within 30 days of the completion or abandonment of any well, the driller shall file an official well drillers report (well log) with the state engineer. The official well drillers report (well log) will be mailed, or otherwise directed to the licensed driller upon receipt of the intention to drill or "start" card as described in Section R655-4-4.1.1. The official well drillers report shall be submitted on forms furnished by the state engineer and shall contain all information he may require, including the following:

a) The name and license number of the driller;

b) The name and post-office address of the well owner;

c) The number of the valid authorization to drill or in the case of a well drilled under a provisional or monitor well letter, the date of the letter and designated approval number.

d) The location of the well by section, township, and range, and course and distance from an established outside section corner or quarter corner.

e) The size and type of casing, screen, perforations, packers or seals installed in the well.

f) The total depth of the well and borehole and depths of all installed casings or screens.

g) The lithologic log of the well based on strata samples taken from the borehole as drilling progresses.

h) The beginning and completion dates for construction, renovation or abandonment of the well;

i) The temperature and quantity of water issuing, drawn, or test pumped from the well.

j) The location of all water-bearing strata.

k) The static water level in the well at the time of completion.

l) The drilling methods and fluids used in the construction of the well.

For the purposes of these rules, a well will be considered completed or abandoned when the well driller removes his drilling rig from the well site, unless the well driller provides written notice to the state engineer that he plans to continue work at some later date as provided in Section R655-4-12.1.

4.3.1 Accuracy and completeness of the submitted official well drillers report (well logs) are required. Of particular importance is the lithologic section which should accurately reflect the geologic strata penetrated during the drilling process. Sample identification must be logged in the field as the borehole advances and the information transferred to the official well drillers report (well log) form for submittal to the state engineer.

4.4 Amended Official Drillers Report (Well Log).

An amended official drillers report (well log) may be submitted by the licensed driller if it becomes known that the original report contained inaccurate or incorrect information, or if the original report requires supplemental data or information. Any amended official well drillers report must be accompanied by a written statement, signed and dated by the licensee, attesting to the circumstances associated with and the reasons for submitting the amended official well drillers report.

4.5 Bond Continuation.

The well driller shall have the required penal bond continually in effect during the term of the well driller's license.

4.6 Verification of Authorization to Drill.

The well driller shall make certain that a valid authorization or approval exists to drill before beginning drilling. The authorizations to drill listed in Section R655-4-2.27, allow the applicant to contract with a well driller to drill, replace or renovate exactly one well at each location listed on

the approved form. When the work is completed or abandoned, the permission to drill is terminated. An approved provisional well letter is a special case permitting drilling prior to formal approval, or exploratory drilling, but allowing only enough water to be diverted to determine the characteristics of the groundwater source.

R655-4-5. Penalties.

5.1 License Suspension and Revocation.

The state engineer, upon investigation and after a hearing, on at least ten days' notice given to the licensee by registered mail, may revoke or suspend any well driller's license either permanently or for a fixed period determined by the state engineer, if he finds that the well driller has done any of the following:

a) Intentionally made a material misstatement of fact in his application for a license;

b) Intentionally made a material misstatement of fact in an official well driller's report or amended official well drillers report (well log);

c) Been found to be incompetent as a well driller;

d) Willfully violated any of the prescribed rules;

e) Failed to submit notice of intention to drill (start card) in accordance with the rules;

f) Failed to submit an official well drillers report (well log), completed in accordance with these rules;

g) Allowed any person to operate drilling equipment under authorization of their license without prior written approval by the state engineer.

5.2 Exacting of Bond.

If the state engineer determines, following an investigation and a hearing upon at least ten days notice to the licensee, by registered mail, that the licensee has failed to comply with the rules, the state engineer may exact the bond and deposit the money as a non-lapsing dedicated credit.

5.3 Investigation of Driller Induced Deficiencies.

The state engineer may expend the funds derived from the bond to investigate or correct any deficiencies which could adversely affect the public interest resulting from non-compliance with the rules by any well driller.

5.4 Re-Licensing Following Revocation or Suspension.

After the period set by the state engineer under a revocation or suspension of a well driller's license has expired, a well driller may make application for a new license as provided in Section R655-4-3.2.1 through R655-4-3.2.5.

5.5 Prohibition of Operating During License Revocation.

A well driller who has had his license revoked or suspended will be prohibited from operating well drilling equipment during the revocation or suspension period set by the state engineer.

5.6 Refusal to Issue License.

The state engineer may, upon investigation and after a hearing, refuse to issue a license to an applicant if it appears:

a) That he has not had sufficient training or experience to qualify him as a competent well driller or;

b) That he has intentionally violated the Utah Statutes governing well drillers or these rules relating to well drilling or;

c) That he has intentionally made a material misstatement of fact in an application for a license, in an official well driller's report, or in any other document filed with the state engineer or Division of Water Rights.

5.7 Lack of Knowledge.

Lack of knowledge of the law or the rules relating to well drilling shall not constitute an excuse for violation thereof.

5.8 Violations as a Class B Misdemeanor.

In part, Section 73-3-26 provides that any person who:

(a) drills a well or wells or advertises or holds themselves out as a well driller without first obtaining a license or

(b) drills a well or wells after license revocation or expiration or

(c) drills a well in violation of the rules is guilty of a class B misdemeanor and

(d) each day that violation continues is a separate offense.

R655-4-6. Renewal of Well Driller's License and Operator's Registration.

6.1 Active Licenses

6.1.1 All well driller's licenses expire at 12 midnight on December 31 of the year in which they are issued. Renewal of license will be made upon payment of a fee determined and approved by the legislature pursuant to Section 63-38-3.2, written application to the state engineer, submission of proof of $5,000 penal bond for the next calendar year, and proper submission of all start cards and official well drillers reports (well logs) for the current calendar year. Renewal of an operator's registration will be made upon written application to the state engineer.

6.1.2 Having met all requirements as set forth in Section 655-4-6.1. on or before 12 midnight December 31, the licensee shall be authorized to operate as a well driller until his new license is issued.

6.1.3 License renewal applications not meeting the requirements of Section R655-4-6.1 or received after their December 31, expiration date will be assessed an additional administrative late fee determined and approved by the legislature pursuant to Section 63-38-3.2, before the state engineer will consider license renewal.

6.2 Renewal of Inactive Licenses

6.2.1 Drillers who have held an active license within the previous 24 months of the license expiration date shall make application under provisions of Section R655-4-6.1.

6.2.2 Drillers who have not held an active license within the previous 24 months of license expiration date shall make application under the provisions of Section R655-4-3.2 through Section R655-4-3.7.

R655-4-7. Minimum Construction Standards.

7.1 General.

The failure of a water well driller to abide by these minimum standards can result in any of the following: (1) the revocation or suspension of his well driller's license, (2) a finding that he is guilty of a misdemeanor, as provided under Section 73-3-26, (3) the exacting of the $5,000 bond by the state engineer.

In some locations, the compliance with the following minimum standards will not result in a well being free from pollution or from being a source of subsurface leakage, waste, or contamination of the groundwater resource. Since it is

impractical to attempt to prepare standards for every conceivable situation, the well driller shall use his judgement to construct wells under more stringent standards when such precautions are to protect the groundwater supply and those using the well in question.

7.1.2 Use of NSF, ASTM, AWWA or ANSI certified products, materials or procedures: Any product, material or procedure designed for use in the drilling, construction, cleaning, renovation, development or abandonment of water or monitor wells, which has received certification and approval for its intended use by the National Sanitation Foundation (NSF) under ANSI/NSF Standard 60 or 61, the American Society for Testing Materials (ASTM), the American Water Works Association (AWWA) or the American National Standards Institute (ANSI) may be utilized and is incorporated by reference to these rules. Other products, materials or procedures may also be utilized for their intended purpose upon manufacturers certification that they meet or exceed the standards or certifications referred to in Section R655-4-7.1.2.

7.2 Well Casing.

It shall be the sole responsibility of the well driller to determine the suitability of any type of well casing for the particular well he is constructing, in accordance with these minimum requirements. The well casing shall extend a minimum of 18 inches above finished ground level and the natural ground surface should slope away from the casing.

7.2.1 Steel Casing.

All steel casing installed in Utah shall be in new or like-new condition, being free from pits or breaks, and shall meet the minimum specifications listed in Table 1, dated December 15, 1994, which are incorporated by reference to these rules.

TABLE 1
MINIMUM WALL THICKNESSES FOR STEEL WALL CASING

	DEPTH							
Nominal Casing Diameter (In)	0 to 200 (Ft)	200 to 300 (Ft)	300 to 400 (Ft)	400 to 600 (Ft)	600 to 800 (Ft)	800 to 1000 (Ft)	1000 to 1500 (Ft)	1500 to 2000 (Ft)
2	.154	.154	.154	.154	.154	.154	....	....
3	.216	.216	.216	.216	.216	.216	....	....
4	.237	.237	.237	.237	.237	.237	.237	.237
5	.250	.250	.250	.250	.250	.250	.250	.250
6	.250	.250	.250	.250	.250	.250	.250	.250
8	.250	.250	.250	.250	.250	.250	.250	.250
10	.250	.250	.250	.250	.250	.250	.313	.313
12	.250	.250	.250	.250	.250	.250	.313	.313
14	.250	.250	.250	.250	.313	.313	.313	.313
16	.250	.250	.313	.313	.313	.313	.375	.375
18	.250	.313	.313	.313	.375	.375	.375	.438
20	.250	.313	.313	.313	.375	.375	.375	.438
22	.313	.313	.313	.375	.375	.375	.375	.438
24	.313	.313	.375	.375	.375	.438	....	....
30	.313	.375	.375	.438	.438	.500	....	....

7.2.2 Plastic Casing.

PVC, SR, ABS, etc. casing may be installed in Utah upon obtaining permission of the well owner. Plastic well casing shall be manufactured and installed to conform with the American National Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM) Standard F 480-94, Standard Dimension Ratio (SDR) 21 which are incorporated by reference to these rules. The casing is normally marked "WELL CASING" and with the ANSI/ASTM designation "F 480-94, SDR-21". All plastic casing for use in potable water supplies shall be manufactured to be acceptable to the American National Standards Institute/National Sanitation Foundation (ANSI/NSF) standard 61. Other types of plastic casings may be installed upon manufacturers certification that such casing meets or exceeds the above described ASTM/SDR specification or ANSI/NSF approval. Minimum specifications are given in Table 2 dated December 15, 1994 which is incorporated by reference to these rules.

7.2.3 PVC well casing exceeding 4-1/2" outside diameter with a schedule 40 designation does not meet the minimum wall thickness required under ASTM Standard F480-94 for the SDR 21 specification shown in Table 2. Therefore, any PVC casing exceeding 4-1/2" outside diameter must be designated schedule 80 or greater to insure that minimum wall thickness and collapse strengths are maintained. Additionally, caution should be used whenever other than factory slots or perforations are added to PVC well casing. The installation of hand cut slots or perforations significantly reduces the collapse strength tolerances of unaltered casings.

TABLE 2
WALL THICKNESS FOR THERMOPLASTIC
WATER WELL CASING PIPE

Nominal Casing Diameter (In.)	Minimum Thickness (In.)	SDR
2	0.133	21
2.5	0.137	21
3	0.167	21
3.5	0.190	21
4	0.214	21
5	0.265	21
6	0.316	21
8	0.410	21
10	0.511	21
12	0.606	21
14	0.667	21
16	0.762	21

ASTM Specification, F480-94

7.2.4 Fiberglass casing and screen.

Fiberglass reinforced plastic well casings and screens may be installed in wells upon obtaining permission of the well owner. All fiberglass casing or screens installed in wells for use in potable water supplies shall be manufactured to be acceptable by American National Standards Institute/National Sanitation Foundation Standard 61.

7.3 Casing Joints.

All well casing joints shall be made water tight. In instances in which a reduction in casing diameter is made, there shall be enough overlap of the casings to prevent misalignment and to insure the making of an adequate seal in the annular space between casings to prevent the movement of unstable sediment or formation material into the well, in addition to preventing the degradation of the water supply by the migration of inferior quality water through the annular space between the two casings.

7.3.1 Steel Casing.

All steel casing shall be screw-coupled or welded. If the joints are welded, the weld shall be at least as thick as the wall thickness of the casing and shall consist of at least two beads for the full circumference of the joint.

7.3.2 Plastic Casing.

All plastic well casing shall be mechanically screw coupled, chemically welded, cam-locked or lug coupled to provide water tight joints as per ANSI/ASTM F480-94 standards. Metal screws driven into casing joints shall not be long enough to penetrate the inside surface of the casing. Metal screws should be used only when surrounding air temperatures are below 50 degrees Fahrenheit (F) which retards the normal setting of the cement.

7.4 Mineralized, Contaminated or Polluted Water.

Whenever a water bearing stratum that contains nonpotable mineralized, contaminated or polluted water is encountered, the stratum shall be adequately sealed off so that contamination or co-mingling of the overlying or underlying groundwater zones will not occur.

7.5 Explosives.

Explosives used in well construction shall not be detonated within the section of casing designed or expected to serve as the surface seal of the completed well, whether or not the surface seal has been placed.

7.6 Well Site Locations.

Well site locations are described by course and distance from outside section corners or quarter corners on all state engineer authorizations to drill. However, the licensee should also be familiar with local zoning ordinances, or county boards of health requirements which may limit or restrict the actual well location in relationship to existing or proposed concentrated sources of pollution or contamination such as septic tanks, drain fields, sewer lines, stock corrals, feed lots, etc.

7.7 Chlorination of Water.

No contaminated or untreated water shall be placed in a well during construction. Water should be obtained from a chlorinated municipal system. Where this is not possible, the water must be treated to give 100 parts per million free chlorine residual. Table 3, dated December 15, 1994, which is incorporated by reference to these rules, gives the amount of common laundry bleach or dry powder hyperchlorite required per 100 gallons of water or 100 feet linear casing volume of water to mix a 100 parts per million solution. Additional recommendations and guidelines for water well system disinfection are available from the state engineer upon request.

TABLE 3
AMOUNT OF HYPERCHLORITE FOR EACH 100 FEET OF WATER
STANDING IN WELL (100 ppm solution)

Well Diameter (inches)	5.25% Solution (cups)*	25% Powder (ounces)	70% Powder (ounces)**
2	0.50	1.00	0.50
4	2.25	3.50	1.50
6	5.00	8.00	3.00
8	8.50	14.50	5.50
10	13.00	22.50	8.50
12	19.00	32.50	12.00
14	26.00	44.50	16.50
16	34.00	58.00	26.00
20	53.00	90.50	33.00
100 gal	3.50	5.50	2.00

NOTES:
* Common Laundry Bleach
** High Test Hyperchlorite

7.8 Access Port.

Every well shall be equipped with a usable access port so that the position of the water level, or pressure head, in the well can be measured at all times.

7.9 Protection of Aquifer.

The well driller shall take due care to protect the producing aquifer from clogging or contamination. Every effort shall be made to remove all substances and materials introduced into the aquifer or aquifers during well construction. "Substances and materials" shall mean all drilling fluids, filter cake, and any other organic or inorganic substances added to the drilling fluid that may seal or clog the aquifer. The introduction of lost circulation materials (LCM's) during the drilling process shall be limited to those products which will not present a potential medium for bacterial growth or contamination. Only LCM's which are non-organic and biodegradable, such as "rock wool" consisting of spun calcium carbonate, which can be safely broken down and removed from the borehole, may be utilized. This is especially important in the construction of wells designed to be used as a public water system supply.

7.10 Containment of Drilling Fluid.

Drilling or circulating fluid introduced into the drilling process shall be contained in a manner to prevent surface or subsurface contamination and to prevent degradation of natural or man-made water courses or impoundments.

7.11 Completion or Abandonment.

A licensed driller shall not remove his drill rig from a well site unless the well is completed or abandoned. Completion of a well shall include all surface seals, gravel packs or curbs required. Upon completion, all wells shall be equipped with a water-tight, tamper-resistant casing cap or sanitary seal. Abandonment of a well shall be in compliance with Section R655-4-12.

7.12 Replacement Wells.

Whenever a licensee is contracted to replace an existing well under state engineer's approval, it shall be the responsibility of the licensee to contract with the well owner to insure the old well is permanently abandoned in accordance with the provisions called for in Section R655-4-12 through Section R655-4-12.12. The abandonment procedures, materials used and the relative location of the new well shall be submitted by the licensee as part of the official well drillers report (well log) under the approved replacement well application. The permanent abandonment of the old well shall be completed before the rig is removed from the site of the newly constructed replacement well.

R655-4-8. Drilled Wells.

Drilled wells shall be drilled in compliance with the following standards. Bored, jetted, or driven wells shall be considered to be drilled wells for purposes of these rules.

8.1 Well Casing.

All well casing installed shall meet the minimum standards given in Sections R655-4-7.2.1, R655-4-7.2.2 and R655-4-7.2.3. Plastic casing is not recommended for use in wells drilled by the cable tool method.

8.2 Sealing of Casing.

All drilled wells shall have a surface seal installed in accordance with the provisions of Table 4 dated December 15, 1994, which are incorporated by reference to these rules. Neat cement grout, sand cement grout, bentonite or clay slurry may

be used in the surface seal. All grout placed deeper than 30 feet or under water shall be placed by tremie line, pumping, or pressure. Portland Cement grouts must be allowed to cure a minimum of 72 hours for Type I-II cement or 36 hours for Type III cement before construction or pump testing may be resumed.

8.2.1 Non-perforated Casing.

Non-perforated casing shall be installed to the minimum depths given in Table 4, dated December 15, 1994, which is incorporated by reference to these rules. A perforated liner, well screen, or smaller casing may be installed below the well casing, if necessary, to complete the well. The annular space between the two casings shall be sealed water-tight with grout, expansive clay, or a mechanical packer. Figures 1, 2, 3, and 4, dated December 15, 1994, which are incorporated by reference to these rules, illustrate typical well completions in the various formations listed in Table 4.

TABLE 4
CASING GROUTING TABLE

Overburden	Minimum Grouting Depth	Minimum Non-Perforated Casing Depth
Unconsolidated, Permeable Formations	18 Feet to Surface	Below Lowest Pumping Level
Clay or Stratified Deposits of Sand, Gravel, and Clay	18 Feet to Surface and Driven 5 Feet Into an Impervious Clay Layer	Top of the Uppermost Producing Zone
Consolidated Rock	18 Feet to Surface and Grouted 5 Feet Into a Rock Formation	18 Feet or 5 Feet Into the Rock Formation

8.3 Pitless Adaptor/Pitless Unit.

Devices designed for the attachment to openings in the water well casing, providing a sanitary connection for supply lines or pipes, which prevent entrance of contaminants from surface or near surface sources through such openings into the well or potable water supply may be installed in accordance with manufacturers recommendations. Such devices protect the water and distribution lines from temperature extremes, permit termination of the casing above ground as required in Section R655-4-7.2 and allow access to the well, pump or system components within the well without exterior excavation or disruption of surrounding earth.

8.4 Gravel Packed Wells.

8.4.1 Oversize Borehole.

The diameter of the borehole shall be at least four inches larger than the outside diameter of the casing to be installed to allow for proper placement of the gravel pack and adequate clearance for tremie pipe for grouting and surface seal installations as shown in figure 4. In order to accept a smaller diameter casing, any oversized borehole penetrating unconsolidated or stratified formations, the annular space must be sealed in accordance with Section R655-4-8.2 from the static water level back to ground surface, or from a point five feet into an impervious strata overlying the water producing zones back to the surface.

8.4.2 Filter Material.

The filter material shall consist of clean, well rounded grains that are smooth and uniform. The filter material should not contain more than 2% by weight of thin, flat, or elongated pieces and should not contain organic impurities or contaminants of any kind. In order to assure that no contamination is introduced into the well, the gravel pack must be washed with a minimum 100 ppm solution of chlorinated water as listed in Table 3 or dry hyperchlorite mixed with the gravel pack at the surface before it is introduced into the well.

8.4.3 Placement of Filter Material.

All filter material shall be placed using a method that through common usage has been shown to minimize 1) bridging of the material between the borehole and the casing, and 2) excessive segregation of the material after it has been introduced into the annulus and before it settles into place.

8.4.4 No Surface Casing Used.

If no permanent surface casing is installed, a cement grout, bentonite, or clay slurry seal shall be installed to at least 5 feet into a clay layer or other tight formation overlying the producing zone. The well seal shall extend down at least 18 feet from the land surface.

8.4.5 Surface Casing Used.

If permanent surface casing is installed, it shall be unperforated and installed in accordance with Table 4, dated December 15, 1994, which is incorporated by reference to these rules. After the gravel pack has been installed, the inner casing may be sealed by either welding a water-tight steel cap between the two casings at land surface or filling the annular space between the two casings with cement grout, bentonite, or clay slurry from 18 feet to the surface.

8.5 Special Additional Standards for Artesian Wells

8.5.1 Sealing of Casing.

Unperforated well casing shall extend into the confining stratum overlying the artesian zone, and shall be adequately sealed into the confining stratum to prevent both surface and subsurface leakage from the artesian zone.

8.5.2 Elimination of Leakage.

If leaks occur around the well casing or adjacent to the well, the well shall be completed with the seals, packers, or casing necessary to eliminate the leakage.

8.5.3 Control Valves.

If a well flows, it shall be equipped with a suitable control valve. The control valve, must be available for inspection by the state engineer at all times.

R655-4-9. Deepening or Renovation of Wells.

9.1 Sealing of Casing.

If in the repair of a drilled well, the old casing is withdrawn, the well shall be recased in accordance with the rules provided in Section R655-4-8.

9.2 Inner Casing.

If an inner casing is installed to prevent leakage of undesirable water into a well, the space between the two well casings shall be completely sealed using packers, casing swedging, pressure grouting, etc., to prevent the movement of water between the casings.

9.3 Outer Casing.

If the "over-drive" method is used to eliminate leakage around an existing well, the casing driven over the well shall meet the minimum specifications listed in Section R655-4-7.2.1 and Table 1.

9.4 Artesian Well.

If upon deepening an existing well, an artesian zone is encountered, the well shall be cased and completed as provided in Section R655-4-8.5.1.

9.5 Drilling in a Dug Well.

A drilled well may be constructed through an existing dug well provided that:

9.5.1 An unperforated section of well casing extends from a depth of at least ten feet below the bottom of the dug well and at least 20 feet below land surface to above the maximum static water level in the dug well, and

9.5.2 A two foot thick seal of concrete, or clay slurry is placed in the bottom of the dug well so as to prevent the direct movement of water from the dug well into the drilled well, and

9.5.3 The drilled well shall be pumped or bailed to determine whether the seal described in R655-4-9.5.2 is adequate to prevent movement of water from the dug well into the drilled well. If the seal leaks, additional sealing and testing shall be performed until a water tight seal is obtained.

R655-4-10. Special Standards for Particular Wells.

10.1 Unusual Conditions.

If unusual conditions occur at a well site and compliance with these rules and standards will not result in a satisfactory well or protection to the groundwater supply, a licensed water well driller shall request that special standards be prescribed for a particular well. The request for special standards shall be in writing and shall set forth the location of the well, the name of the owner, the unusual conditions existing at the well site, the reasons that compliance with the rules and minimum standards will not result in a satisfactory well, and the proposed standards that the licensed water well driller believes will be more adequate for this particular well. If the state engineer finds that the proposed changes are in the best interest of the public, he will approve the proposed changes by assigning special standards for the particular well under consideration.

10.2 Special Standards.

If in the course of investigating the groundwater resources of Utah, the state engineer finds that special standards are required for the development of groundwater from any particular groundwater reservoir or area, special standards for the construction and maintenance of wells may be prescribed.

10.2.1 Special Water Well Casing Standards for the 71, 73, 75, and 77 Drainage Areas.

10.2.1.1 During the course of his investigations of groundwater in the previously mentioned drainages, the state engineer has found that a variance in water well casing wall thicknesses is warranted. This special standard shall apply only in those specific areas defined in Section R655-4-10.2.1.5. The casing specifications adopted in Section R655-4-7.2.1 and Section R655-4-7.2.2 shall govern in all other parts of the affected drainage areas.

10.2.1.2 It shall be the sole responsibility of the water well driller to install casing suitable to the conditions encountered at the well site, in accordance with these minimum specifications.

10.2.1.3 Steel Casing. All steel casing installed under this section shall be new or in like-new condition free from pits or breaks and shall meet the minimum specifications listed in Table 5, dated December 15, 1994, which is incorporated by reference to these rules.

TABLE 5
WALL THICKNESS FOR STEEL WATER WELL PIPE

Nominal Casing Diameter (Inches)	Minimum Wall Thickness (Inches)
4	0.188
6	0.188
8	0.188
10	0.250
12	0.250
14	0.250
16	0.250
18	0.250
20	0.250

10.2.1.4 Casing Joints.

All casing joints shall be made in conformance to Sections R655-4-7.3, R655-4-7.3.1, and R655-4-7.3.2.

10.2.1.5 Applicable Areas.

This special standard shall apply only in the specific hydrologic drainage areas listed below. 71 Area: Those parts of the 71 drainage area in Washington, Iron, and Beaver Counties below an elevation of 6,000 ft. Mean Sea Level (MSL). Those parts of the 71 drainage area in Millard County below an elevation of 5,200 ft. MSL. 73 Area, and 75 Area: Those parts of the 73 and 75 drainage areas in Iron County below an elevation of 6,000 ft. MSL. 77 Area: Those parts of the 77 drainage area in Beaver County below an elevation of 6,000 ft. MSL.

R655-4-11. Drilling of Monitor Wells.

11.0 General.

All monitor wells in the state constructed to a depth of 30 feet or greater below natural ground surface shall be installed by a currently licensed well driller.

11.1 Approval.

Approval to drill monitor wells is issued by the state engineer following review of written requests from the owner or applicant, federal or state agency or engineering representative. The requests for approval shall be made on forms provided by the state engineer and shall include the following information:

1) General location or common description of the monitoring project.

2) Specific course and distance locations from established government surveyed outside section corners or quarter corners or location by 1/4, 1/4 section.

3) Total anticipated number of wells to be installed.

4) Diameters, approximate depths and materials used in the wells.

5) Projected start and completion dates.

6) Name and license number of the driller contracted to install the wells.

11.2 Start Card/Official Well Drillers Report.

Upon written approval by the state engineer the project will be assigned an approved authorization number which will be referenced by the licensed driller on all intention to drill (start) cards and official well drillers reports as required in Section R655-4.1.1 and Section R655-4.3.

11.3 Installation and Construction.

11.3.1 All material used in the installation of monitor

wells shall be sterile and contaminant free when placed in the ground. During construction contaminated water should not be allowed to enter contaminant-free geologic formations or water bearing zones. 11.3.2 Some minor cross-contamination may occur during the drilling process, but the integrity of the borehole and individual formations must then be safeguarded.

11.3.3 The well casing should be perforated or screened and filter packed with sand or gravel where necessary to provide adequate sample collection at depths where appropriate aquifer flow zones exist. The annular space between the borehole and casing should be adequately sealed using bentonite-slurry, pellets, granules or chips, cement grout or neat cement.

11.3.4 The gravel or filter pack should generally extend two feet to ten feet above screened or perforated areas to prevent the migration of the sealing material from entering the zones being sampled. Drill cutting should not be placed into the open borehole annulus. Figure 6, dated December 15, 1994 refers to typical groundwater monitor well construction standards and is incorporated by reference to these rules.

11.4 Abandonment.

Abandonment of monitor wells shall be completed in compliance with the provisions of Sections R655-4-12.1 through R655-4-12.12. The provisions of subsection R655-4-12.4(4) are not required for the permanent abandonment of monitor wells or wells completed less than 30 feet below natural ground surface.

11.5 Summary.

Most monitor well projects are the result of compliance with the Environmental Protection Agency (EPA), Federal Regulations such as the Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"), or specific State Solid and Hazardous Waste requirements. The contracts governing their installation are tightly written containing specific requirements as to site location, materials used, sampling procedures and overall objectives. Therefore specific construction requirements for monitor well installation shall be governed by applicable contracts and regulations providing they meet or exceed state requirements and specifications. Guidelines and recommended practices dealing with the installation of monitor wells may be obtained from the state engineer upon request. Additional recommended information may be obtained from the Environmental Protection Agency (EPA), Resource Conservation and Recovery Act (RCRA), Groundwater Monitoring Enforcement and Compliance Document available from EPA's regional office in Denver, Colorado and from the Handbook of Suggested Practices for the Design and Installation of Groundwater Monitoring Wells, available from the National Groundwater Association in Dublin, Ohio.

R655-4-12. Abandonment of Wells.

12.1 Temporary Abandonment.

When any well is temporarily removed from service, the top of the well shall be sealed with a tamper resistant, water-tight cap or seal. If the well is temporarily abandoned during construction, it shall be assumed that the well is permanently abandoned after 90 days and an official report of well driller (well log) must be submitted in compliance with Section R655-4.4.3.

12.2 Permanent Abandonment.

Any well that is to be permanently abandoned shall be completely filled in a manner to prevent vertical movement of water within the borehole as well as preventing the annular space surrounding the well casing from becoming a conduit for possible contamination of the groundwater supply.

12.3 License Required.

Well abandonment shall be accomplished under the direct supervision of a currently licensed water well driller who shall be responsible for verification of the procedures and materials used.

12.4 Materials Used.

The following materials may be used in the permanent abandonment of wells:

1) Neat Cement conforming to ASTM standard C150-94 (standard specification for Portland Cement) of sufficient weight of not less than 15 lbs/gallon to prevent the flow of any water into the borehole from any aquifer penetrated.

2) Cement grout consisting of equal parts of cement conforming to ASTM standard C150 and sand or aggregate with no more than 6 gallons of water per 94 pound sack of cement.

3) Bentonite-based, commercially produced products specifically designed for permanent well abandonment, which are mixed and placed according to manufacturer's recommended procedures (i.e. Plug-Gel, Shur-Gel, Benseal, etc.).

4) The uppermost ten feet of the abandoned well casing or borehole shall consist of neat cement as required in Subsection R655-4-12.4(1) or cement grout as required in Subsection R655-4-12.4(2).

5) The liquid phase of the abandonment fluid shall be non-saline water containing no chemicals or toxic materials or other substances which may decompose or possibly contaminate the groundwater supply.

6) Abandonment materials placed opposite any nonwater bearing intervals or zones shall be at least as impervious as the formation or strata prior to penetration during the drilling process.

12.5 Placement of Materials.

1) Neat cement and cement grout shall be introduced at the bottom of the well or required sealing interval and placed progressively upward to the top of the well. The sealing material shall be placed by the use of a grout pipe, tremie line or dump bailer in order to avoid segregation or dilution of the materials.

2) Bentonite-based abandonment products shall be mixed and placed according to manufacturer's recommended procedures.

12.6 Termination of Casing.

The casings of wells to be abandoned shall be severed a minimum of two feet below either the natural ground surface adjacent to the well or at the collar of the hole, whichever is the lower elevation. A minimum of two feet of compacted native material shall be placed above the abandoned well upon completion.

12.7 Report of Abandonment.

Within 30 days of the completion of well abandonment procedures, a report must be submitted to the state engineer by the responsible licensed driller giving data relating to the

abandonment of the well. The report shall be made on an official report of well driller (well log) forms furnished by the state engineer and shall contain information he may require, including the following:

1) Name of licensed driller or other person(s) performing the abandonment procedures.

2) Name of the well owner at time of abandonment.

3) Local address or location of well by section, township and range.

4) Abandonment materials, equipment and procedures used.

5) Water right or authorization number covering the well.

6) Final disposition of the well.

7) Date of completion.

12.8 Abandonment of Artesian Wells.

A neat cement, cement grout or concrete plug shall be placed in the confining stratum overlying the artesian zone so as to prevent subsurface leakage from the artesian zone. The remainder of the well shall be filled with cement grout, neat cement, bentonite abandonment products, concrete, or clay slurry. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12.4(1) and Subsection R655-4-12.4(2).

12.9 Abandonment of Drilled and Jetted Wells.

A cement grout, neat cement or concrete plug shall be placed opposite all perforations, screens or openings in the well casing. The remainder of the well shall be filled with cement grout, neat cement, bentonite abandonment products, concrete, or clay slurry. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12.4(1) and Subsection R655-4-12.4(2).

12.10 Abandonment of Gravel Packed Wells.

All gravel packed wells shall be pressure grouted throughout the perforated or screened section of the well. The remainder of the well shall be filled with cement grout, neat cement, bentonite abandonment products, concrete, or clay slurry. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12.4(1) and Subsection R655-4-12.4(2).

12.11 Removal of Casing.

It is desireable to remove the well casing during well abandonment, and when doing so the abandonment materials shall be placed from the bottom of the well or borehole progressively upward as the casing is removed. The well shall be sealed with cement grout, neat cement, bentonite abandonment products, concrete, or clay slurry. In the case of gravel packed wells, the entire gravel section shall be pressure grouted. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-12.4(1) and Subsection R655-4-12.4(2).

12.12 Replacement Wells.

Wells which are to be removed from operation and replaced by the drilling of a new well, under an approved replacement application, shall be abandoned in a manner consistent with the provisions of Subsections R655-4-12.1 through R655-4-12.12 before the rig is removed from the site of the newly constructed replacement well. Also refer to the requirements provided in Subsection R655-4-7.12.

R655-4-13. Wells Intended for Public Water Systems Supply.

13.1 DEPARTMENT OF ENVIRONMENTAL QUALITY, DIVISION OF DRINKING WATER REQUIREMENTS. Each driller shall be familiar with the requirements of the Department of Environmental Quality, Division of Drinking Water with respect to public water system supply wells. Rules governing public water system supply wells are given in "Section R309, "Drinking Water Source Protection Rule" available from the Department of Environmental Quality (DEQ), Division of Drinking Water (DDW), PO Box 144830, 150 North 1950 West, Salt Lake City, Utah 84114-4830.

When drilling wells intended for public water system supply use, the driller should be familiar with and acquaint his client with local board of health or state DEQ, DDW rules which require among other things:

a) Written specifications governing the well drilling; procedures, practices and materials to be used in the construction of the well and placement of the grout seal; and methods for development, cleaning, disinfection, and testing of the well;

b) A location map showing land ownership surrounding the proposed well site; and

c) A Preliminary Evaluation Report as described in Subsection R309-113-13(2), which may require the additional services of a hydro-geologist, but must involve the public water system management for which the well will provide water.

13.2 Inspection and Certification of Grout Seal.

A representative of the Department of Environmental Quality, Division of Drinking Water must be present at the time the surface grout seal is placed in all public water system supply wells, so that the placement of the seal can be certified. In order to assure that a representative will be available, and to avoid down-time waiting for a representative, notice should be given several days in advance of the projected surface grout seal placement. When the time and date for the surface grout seal installation are confirmed a definite appointment should be made with the representative of DEQ/ DDW to witness the grout seal installation by calling (801) 536-4200. The licensed driller shall have available a copy of the start card relating to the well and provide that information to the inspecting representative of DEQ/DWW at the time of the surface grout seal installation and inspection.

KEY: water rights, licensing, well drilling

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R657. Natural Resources, Wildlife Resources.
R657-13. Taking Fish and Crayfish.
R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(c) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(d) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(e) "Bait" means a digestible substance, including worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(f) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(g) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(h) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(i) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(j) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(k) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(l) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(m) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(n) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(o) "Motor" means an electric or internal combustion engine.

(p) "Nongame fish" means species of fish not listed as game fish.

(q) "Possession limit" means, for purposes of this rule only, one bag limit, including fish at home, in a cooler, camper, tent, freezer, or any other place of storage.

(r) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(s) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(t) "Second pole" means fishing with one additional rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, bait, or lures attached to it and is held in the hands of, or within sight of the person fishing.

(u) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(v) "Single hook" means a hook or multiple hooks having a common shank.

(w) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(x) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(y)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

(z) "Underwater Spearfishing" means, fishing by a person swimming or diving and using a mechanical device held in the hand which uses a rubberband, spring, or pneumatic power to propel a spear to take fish.

R657-13-3. Free Fishing Day.

A license is not required on free fishing day, Saturday June 10. All other laws and rules apply.

R657-13-4. Fishing Contests.

(1)(a) A certificate of registration from the division is required for fishing contests:

(i) with 50 or more contestants; or

(ii) any fishing contest offering $500 or more in prizes.

(b)(i) Application for certificates of registration are

available from division offices and must be submitted at least 60 days prior to the date of the fishing contest.

(ii) The division may take public comment before issuing a certificate of registration if, in the opinion of the division, the proposed fishing contest has potential impacts to the public or substantially impacts a public fishery.

(c) A certificate of registration may cover more than one fishing contest.

(d) The division may deny issuing a certificate of registration or impose stipulations or conditions on the issuance of the certificate of registration in order to achieve a management objective, to adequately protect a fishery or to offset impacts on a fishery or heavy uses of other public resources.

(e) A report must be filed with the division within 30 days after the fishing contest is held. The information required shall be listed on the certificate of registration.

(f)(i) Only one fishing contest may be held on a given water at any time. Each fishing contest is restricted to being held on only one water at a time.

(ii) Fishing contests may not be held on a holiday weekend, state or federal holiday, or free fishing day, except as provided in Subsection (g).

(g) A fishing contest may be held on free fishing day and a certificate of registration is not required if :

(i) contestants are limited to persons 13 years of age or younger; and

(ii) less than $500 are offered in prizes.

(2) Fishing contests conducted for cold water species of fish such as trout and salmon may not be conducted:

(a) if the fishing contest offers $500 or more in total prizes, except on Flaming Gorge Reservoir there is no limit to the amount that may be offered in prizes;

(b) those waters where the Wildlife Board has imposed special harvest rules as provided in the annual proclamation of the Wildlife Board for taking fish and crayfish.

(3) Contests for warm water species of fish shall be conducted as follows:

(a) all contests must be:

(i) authorized by the division through the issuance of a certificate of registration; and

(ii) carried out consistent with any requirements imposed by the division;

(b) Fish brought in to be weighed or measured may not be released within 1/2 mile of a marina, boat ramp, or other weigh-in site and must be released back into suitable habitat for that species; and

(c) If tournament rules allow smaller fish to be entered in the contest than the size allowed for possession under the proclamation of the Wildlife Board for taking fish and crayfish, the fish must be weighed or measured immediately and released where they were caught.

R657-13-5. Interstate Waters.

(1) Lake Powell and Flaming Gorge Reservoir:

(a) The purchase of a reciprocal fishing stamp allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing stamps are offered for Lake Powell and Flaming Gorge Reservoir.

(c) Any person qualifying as an Arizona resident and having in their possession a valid Arizona resident fishing license and a Utah reciprocal fishing stamp for Lake Powell, is permitted to fish within the Utah boundaries of Lake Powell.

(d) Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing stamp for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

(e) Utah residents may obtain reciprocal fishing stamps by contacting the state of Arizona for Lake Powell, and the state of Wyoming for Flaming Gorge.

(f) Nonresidents may obtain reciprocal fishing stamps from division offices and selected license agents.

(g) The reciprocal fishing stamp must be:

(i) signed across the face by the holder as the holder's name appears on the valid fishing or combination license; and

(ii) attached to the fishing or combination license.

(h) Reciprocal fishing stamps are valid on a calendar year basis.

(i) Anglers are subject to the laws and rules of the state in which they are fishing.

(j) Only one bag limit may be taken and held in possession even if licensed in both states.

(2) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake.

(b) Only one bag limit may be taken and held in possession even if licensed in both states.

R657-13-6. Angling.

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than one line is unlawful, except while fishing for crayfish without the use of fish hooks and on selected waters with a valid second pole permit. A second pole permit is not required when fishing for crayfish with lines without hooks.

(3) No artificial lure may have more than three hooks.

(4) A person may not possess hooks or lures with hooks that exceed 9/16 inches on specific waters as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(5) No line may have attached to it more than two baited hooks, two artificial flies, or two artificial lures, except for a setline or while fishing at Flaming Gorge Reservoir.

(6) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

R657-13-7. Fishing With a Second Pole.

(1) A person may use a second pole to take fish only in the:

(a) Bear River from the Idaho state line downstream, including Cutler Reservoir and the outlet canals;

(b) Little Bear River below Valley View highway (SR-130);

(c) Malad River;

(d) Newton Reservoir;
(e) Hyrum Reservoir;
(f) Willard Bay Reservoir;
(g) Pine View Reservoir;
(h) Flaming Gorge Reservoir;
(i) Pelican Lake;
(j) Starvation Reservoir;
(k) Utah Lake;
(l) Yuba Reservoir;
(m) D.M.A.D.;
(n) Gunnison Bend;
(o) Lake Powell; and
(p) Gunlock Reservoir.

(2) A second pole permit is required in addition to a valid annual or short-term fishing license, or combination license and may be obtained for a $10 fee from any division office.

(3) Anglers under 14 years of age must purchase a valid fishing or combination license and second pole permit in order to use a second pole.

(4) A second pole permit shall only be used by the person to whom the second pole permit was issued.

R657-13-8. Setline Fishing.

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2) Angling with one pole is permitted while setline fishing.

(3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4) A setline permit is required in addition to a valid annual fishing or combination license and may be obtained for a $10 fee from any division office.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished.

(6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under 14 years of age must purchase a valid annual fishing or combination license and setline permit in order to use a setline.

R657-13-9. Underwater Spearfishing.

(1) Underwater spearfishing is permitted from official sunrise to official sunset.

(2) Use of artificial light is unlawful while underwater spearfishing.

(3) Deer Creek Reservoir, Starvation Reservoir, Fish Lake, and Flaming Gorge Reservoir are open to taking game fish by means of underwater spearfishing from June 1 through September 4. These are the only waters open to underwater spearfishing for game fish.

(4) The bag and possession limit is two game fish. No more than one lake trout (mackinaw) greater than 20 inches may be taken at Fish Lake. At Flaming Gorge Reservoir only one lake trout (mackinaw) greater than 28 inches may be taken.

(5) Nongame fish may be taken by underwater spearfishing only in the waters listed in Subsection (3) above and as provided in Section R657-13-14.

R657-13-10. Dipnetting.

(1) Hand-held dipnets may be used to take Bonneville cisco only at Bear Lake.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted, except when underwater spearfishing.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment, except as provided in Subsection R657-13-14(1)(c) to take fish or crayfish.

(3) A person may not take protected aquatic wildlife by snagging or gaffing; however, a gaff may be used to land fish caught by lawful means, except at Flaming Gorge Reservoir and Fish Lake.

(4) Chumming is prohibited, on all waters except Lake Powell where dead anchovies only may be used for taking striped bass.

(5) The use of a float tube or a boat, with or without a motor, for fishing is unlawful on some waters. Boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

R657-13-12. Bait.

(1)(a) Fishing is permitted with any bait, except corn, hominy, or live fish.

(b) Possession or use of corn or hominy while fishing is unlawful.

(2) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(3) Game fish or their parts may not be used, except for the following:

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Deer Creek, Fish Lake, Gunnison, Hyrum, Newton, Pineview, Rockport, Sevier Bridge (Yuba), and Willard Bay reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake.

(d) The eggs of any species of fish may be used.

(4) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(5) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

R657-13-13. Prohibited Fish.

(1) The following species of fish are classified as

prohibited and may not be taken or held in possession:

(a) Bonytail chub (Gila elegans);

(b) Bluehead sucker (Catostomus discobolus);

(c) Colorado pikeminnow (Ptychocheilus lucius);

(d) Flannelmouth sucker (Catostomus latipinnis);

(e) Gizzard shad (Dorosoma cepedianum);

(f) Grass carp (Ctenopharyngodon idella);

(g) Humpback chub (Gila cypha);

(h) June sucker (Chasmistes liorus);

(i) Least chub (Iotichthys phlegethontis);

(j) Leatherside chub (Gila copei);

(k) Razorback sucker (Xyrauchen texanus);

(l) Roundtail chub (Gila robusta);

(m) Virgin River chub (Gila robusta seminuda);

(n) Virgin spinedace (Lepidomeda mollispinis); and

(o) Woundfin (Plagopterus argentissimus).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

R657-13-14. Taking Nongame Fish.

(1)(a) Except as provided in Subsections (b) and (c), a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(c) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, spear, or underwater spearfishing:

(i) San Juan River;

(ii) Colorado River;

(iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);

(iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);

(v) White River (Uintah County);

(vi) Duchesne River (from Myton to confluence with Green River);

(vii) Virgin River (Main stem, North, and East Forks).

(viii) Ash Creek;

(ix) Beaver Dam Wash;

(x) Fort Pierce Wash;

(xi) La Verkin Creek;

(xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);

(xiii) Diamond Fork;

(xiv) Thistle Creek;

(xv) Main Canyon Creek (tributary to Wallsburg Creek);

(xvi) South Fork of Provo River (below Deer Creek Dam); and

(xvii) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties).

(2) Nongame fish, except those species listed in Section R657-13-13, may be taken by spear or underwater spearfishing in the waters specified in Subsection R657-13-9(3), angling, traps, bow and arrow, liftnets, or seine.

(3) Seines shall not exceed 10 feet in length or width.

(4) Lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

R657-13-15. Taking Crayfish.

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than one line may have hooks attached (bait is tied to the line so that the crayfish grasps the bait with its claw); and

(d) live crayfish are not transported from the body of water where taken.

R657-13-16. Possession and Transportation of Dead Fish and Crayfish.

(1) Fish held in possession in the field or in transit shall be kept in such a manner that:

(a) the species of fish can be readily identified;

(b) the number of fish can be readily counted;

(c) the size of the fish can be readily measured when the fish are taken from waters where size limits apply and the fish taken from those waters may not be filleted and the heads or tails may not be removed; and

(d) fillets shall have attached sufficient skin to include the conspicuous markings so species may be identified.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4) A person may not take more than one bag limit in any one day or possess more than one bag limit of each species or species aggregate regardless of the number of days spent fishing.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

(a) the number and species of fish;

(b) date caught;

(c) the certificate of registration number of the installation, pond, or short-term fishing event; and

(d) the name, address, telephone number of the seller.

R657-13-17. Possession of Live Fish and Crayfish.

(1) A person may not possess or transport live protected aquatic wildlife except as provided by the Wildlife Code or the rules and proclamation of the Wildlife Board.

(2) For purposes of this rule, a person may not transport live fish or crayfish away from the water where taken.

(3) This does not preclude the use of live fish stringers,

live wells, or hold type cages as part of normal angling procedures while on the same water in which the fish or crayfish are taken.

R657-13-18. Release of Tagged or Marked Fish.

Without prior authorization from the division, a person may not:

(1) tag, mark, or fin-clip fish for the purpose of offering a prize or reward as part of a contest;

(2) introduce a tagged, marked, or fin-clipped fish into the water; or

(3) tag, mark, or fin-clip a fish and return it to the water.

R657-13-19. General Season Dates and Bag and Possession Limits.

(1) All waters of state fish rearing and spawning facilities are closed to fishing.

(2) State waterfowl management areas are closed to fishing except as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(3) The general season for taking fish and crayfish is January 1 through December 31, 24 hours each day. Exceptions are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(4)(a) Bag and possession limits are specified in the proclamation of the Wildlife Board for taking fish and crayfish and apply statewide unless otherwise specified.

(b)(i) A person may not fish in waters that have a specific bag or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, bag, or species provisions on specified waters shall be returned to the water immediately.

(c)(i) Trout, salmon and grayling that are not immediately released and are held in possession, dead or alive, are included in the person's bag and possession limit.

(ii) Once a trout, salmon or grayling is held in or on a stringer, fish basket, livewell, or by any other device, a trout, salmon or grayling may not be released.

(5) A person under 14 years of age may:

(a) fish without a license and take 1/2 a bag and possession limit; or

(b) purchase a license and take a full bag and possession limit.

(6) A person may not take more than one bag limit in any one day or have in possession more than one bag limit of each species or species aggregate regardless of the number of days spent on fishing.

R657-13-20. Variations to General Provisions.

Variations to general season dates, times, bag and possession limits, methods of take, use of a float tube or a boat for fishing, and exceptions to closed areas are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-21. Nonresident One-Day Fishing Stamp.

(1)(a) A nonresident may purchase a one-day fishing stamp to extend a one-day or seven-day fishing license provided the nonresident person has obtained a valid Utah nonresident one-day or seven-day fishing license.

(b) A nonresident must present the one-day or seven-day fishing license to the Division or license agent upon purchasing a one-day fishing stamp.

(2) A one-day fishing stamp will extend the one-day or seven-day fishing license within the current year for one additional day.

(3) The effective date shall be indicated on the one-day fishing stamp.

(4) A Wildlife Habitat Authorization is not required to purchase a one-day fishing stamp.

KEY: fish, fishing, wildlife, wildlife law

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Notice of Continuation September 26, 1997	**23-14-19**
	23-19-1
	23-22-3

R657. Natural Resources, Wildlife Resources.
R657-19. Taking Nongame Mammals.
R657-19-1. Purpose and Authority.

(1) Under authority of Sections 23-13-3, 23-14-18 and 23-14-19, this rule provides the standards and requirements for taking and possessing nongame mammals.

(2) A person taking any live nongame mammal for a personal, scientific, educational, or commercial use must comply with R657-3 Collection, Importation, Transportation and Subsequent Possession of Zoological Animals.

R657-19-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Noncontrolled species" means a species or subspecies of zoological animal that poses a minimal threat of disease or ecological, environmental, or human health or safety risk.

(b) "Nongame mammal" means:

(i) any species of bats;

(ii) any species of mice, rats, or voles of the families Heteromyidae, Cricetidae, or Zapodidae;

(iii) opossum of the family Didelphidae;

(iv) pikas of the family Ochotonidae;

(v) porcupine of the family Erethizontidae ;

(vi) shrews of the family Soricidae; and

(vii) squirrels, prairie dogs, and marmots of the family Sciuridae.

R657-19-3. General Provisions.

(1) A person may not purchase or sell any nongame mammal or it's parts.

(2) A certificate of registration must be obtained prior to taking any species designated in Subsection R657-19-4 as prohibited or any species listed in Rule R657-3-24 as prohibited or controlled.

(3) Section 23-20-8 does not apply to the taking of noncontrolled species covered under this rule.

R657-19-4. Controlled Species.

(1) A certificate of registration is required to take any of the following species of nongame mammals:

(a) bats of any species; and

(b) pika - Ochotona princeps.

(2) A certificate of registration is required to take any shrew - Soricidae, all species.

(3) A certificate of registration is required to take a Utah prairie dog, Cynomys parvidens, in Beaver, Garfield, Iron, Kane, Piute, Sanpete, Sevier, Washington, and Wayne counties.

(4) A certificate of registration is required to take any of the following species of nongame mammals in Washington County:

(a) cactus mouse - Peromyscus eremicus;

(b) kangaroo rats - Dipodomys, all species;

(c) Southern grasshopper mouse - Onychomys torridus; and

(d) Virgin River montane vole - Microtus montanus rivularis, which occurs along stream-side riparian corridors of the Virgin River.

(5) A certificate of registration is required to take any of the following species of nongame mammals in San Juan and Grand counties:

(a) Abert squirrel - Sciurus aberti;

(b) Northern rock mouse - Peromyscus nasutus; and

(c) spotted ground squirrel - Spermophilus spilosoma.

R657-19-5. Noncontrolled Species.

All nongame mammal species not designated as controlled species in R657-19-4, are designated as noncontrolled species and may be taken as follows:

(1) A license is not required to take any species of nongame mammals designated as noncontrolled;

(2) Species of nongame mammals designated as noncontrolled may be taken year-round, 24-hours-a-day.

(3) There are no bag or possession limits for species of nongame mammals designated as noncontrolled.

R657-19-6. Utah Prairie Dog Provisions.

(1)(a) A person may not take a Utah Prairie dog, Cynomys parvidens, without first obtaining a certificate of registration.

(b) A person may apply for a certificate of registration at the division's southern regional office, 622 North Main Street, Cedar City, Utah 84720.

(c) After review of the application, a certificate of registration may be issued.

(2)(a) A person may take Utah prairie dogs with a firearm during daylight hours or by trapping.

(b) A person may not use any chemical toxicant to take Utah prairie dogs.

(c) In addition the requirements of this rule, any person taking Utah prairie dogs must comply with local ordinances and laws.

R657-19-7. Areas Open to Taking Utah Prairie Dogs -- Dates Open --Limits on Number of Utah Prairie Dogs Taken.

(1) A person may take Utah prairie dogs only on private lands within the following counties:

(a) Beaver;

(b) Garfield;

(c) Iron;

(d) Kane;

(e) Piute;

(f) Sanpete;

(g) Sevier;

(h) Washington; and

(i) Wayne.

(2)(a) A person may take Utah prairie dogs on private agricultural areas only, where Utah prairie dogs are causing damage to agricultural lands as provided in the certificate of registration.

(b) Taking of a Utah prairie dog on any land other than as provided in the certificate of registration, including any public land, is a violation of state and federal law.

(3) A landowner, lessee, or employee on a regular payroll and not hired specifically to take Utah prairie dogs, may remove Utah prairie dogs, as provided in the certificate of registration.

(4) The taking of any Utah prairie dog outside the areas provided in this section is prohibited, except by division employees while acting in the performance of their assigned

duties.

(5) The taking of Utah prairie dogs is limited to the dates designated on the certificate of registration. All dates are confined to June 1 through December 31.

(6)(a) A person may take only the total number of Utah prairie dogs designated in the certificate of registration.

(b) The total range-wide take is limited to no more than 6,000 Utah prairie dogs annually.

(c) If the division determines that taking Utah prairie dogs has an adverse effect on conservation of the species, taking shall be further restricted or prohibited.

R657-19-8. Monthly Reports of Take.

The following information must be reported to the division's southern regional office, 622 North Main Street, Cedar City, Utah 84720, every 30 days:

(1) the name and address of the certificate of registration holder;

(2) the person's certificate of registration number; and

(3) the location, method of take, and method of disposal of each Utah prairie dog taken during the 30-day period.

R657-19-9. Unlawful Possession.

A person may not possess a Utah prairie dog or its parts, without first obtaining a valid certificate of registration and a federal permit.

R657-19-10. Violation.

(1) Any violation of this rule is a Class C misdemeanor as provided in Section 23-13-11(2).

(2) In addition to this rule any animal designated as a threatened or endangered species is governed by the Endangered Species Act and the unlawful taking of these species may also be a violation of federal law and rules promulgated thereunder.

KEY: wildlife, game laws

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Notice of Continuation March 30, 2000	**23-14-18**
	23-14-19

R657. Natural Resources, Wildlife Resources.
R657-38. Dedicated Hunter Program.
R657-38-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18, this rule provides the standards and requirements for obtaining a certificate of registration to:

(a) maximize opportunity for recreational deer hunting;

(b) increase public participation in wildlife management programs and projects that are beneficial to wildlife and the division; and

(c) provide courses in hunter ethics and wildlife management principles.

R657-38-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Education course" means a course of instruction provided by the division in hunter ethics and wildlife management principles.

(b) "Hunt area" means an area prescribed by the Wildlife Board where general archery, general season or general muzzleloader deer hunting is open to permit holders for taking deer.

(c) "Participant" means a person who has obtained and signed a certificate of registration for the Dedicated Hunter Program.

(d) "Program" means the Dedicated Hunter Program, a program administered by the division as provided in this rule.

(e) "Wildlife project" means a project designed by the division, or any other individual or entity and pre-approved by the division, that provides wildlife habitat protection or enhancement on public or private lands, improves hunting or fishing access, or other projects or activities that benefit wildlife or directly benefits the division.

(f) "Wildlife Project manager" means an employee of the division, or person approved by the division, responsible for supervising a wildlife project and maintaining and reporting records of service hours to the division.

R657-38-3. Certificate of Registration Required.

(1) A person may not participate in the dedicated hunter program if that person has been convicted of any of the following violations of Title 23, Wildlife Resources Code, or any rule or proclamation of the Wildlife Board, or is currently on wildlife license revocation:

(a) a felony;

(b) a Class A misdemeanor in the last five years; or

(c) three or more Class B or Class C misdemeanors in the past five years.

(2)(a) To participate in the program a person must sign and obtain a certificate of registration from the division.

(b) No more than ten thousand certificates of registration for the program may be in effect at any given time.

(c) Each participant must provide proof of having attended an education course before the division may issue the certificate of registration for the program.

(d) A certificate of registration to participate in the program may not be issued to any person after April 1 annually.

(3) Each certificate of registration is valid for a three-year period.

(4)(a) Any person who is 14 years of age or older may obtain a certificate of registration. A person 13 years of age may obtain a certificate of registration if the date of that person's 14th birthday is before the end of the annual muzzleloader season set for the calendar year in which the certificate of registration is issued.

(b) Any person who is 17 years of age or younger before the beginning date of the annual archery deer hunt shall pay the youth participant fees.

(c) Any person who is 18 years of age or older on or before the beginning date of the annual archery deer hunt shall pay the adult participant fees.

(5) A certificate of registration authorizes the participant an opportunity to receive annually a dedicated hunter permit to hunt during the general archery, general season and general muzzleloader deer hunts. The dedicated hunter permit may be used during the dates and within the hunt area boundaries established annually by the Wildlife Board in the proclamation for taking big game.

(6) Except as provided in Subsection R657-38-7(8), a participant entering the program may take two deer within three years.

(7) A participant may take only one deer in any one year, except as provided in Subsection R657-38-7(8).

(8)(a) In addition to the certificate of registration, the participant must purchase a wildlife habitat authorization each year.

(b) Lifetime license holders are not required to purchase an annual wildlife habitat authorization pursuant to Section 23-19-42.

(9) The certificate of registration must be signed by the participant and a division representative. The certificate of registration is not valid without the required signatures.

(10) The participant and holder of the certificate of registration must have a valid dedicated hunter permit in possession while hunting.

(11) Certificates of registration are not transferable and expire three years from the date of issuance.

(12) Certificates of registration will not be issued to any person who has previously obtained a certificate of registration if that person has failed to provide the service requirements or fees.

R657-38-4. Dedicated Hunter General Permits.

(1) Participants may hunt during the general archery, general season and general muzzleloader deer hunts within the hunt area and during the season dates prescribed in the proclamation of the Wildlife Board for taking big game.

(2) Participants must designate a regional hunt choice on joining the program.

(3)(a) The division shall, prior to the annual bucks, bulls and once-in-a lifetime application period, send a form to each participant.

(b) The participant shall fill out this form indicating the participant's regional general buck deer hunt choice.

(c) The form must be returned by mail to the Salt Lake Division office and must be received prior to the posting of the bucks, bulls and once-in-a-lifetime drawing as provided in the

proclamation of the Wildlife Board for taking big game.

(d) If the form is not received by the division prior to the posting of the bucks, bulls and once-in-a-lifetime drawing and the participant has not obtained a permit by mail, the participant must obtain a permit from a division office beginning on the date general deer permits are made available to the general public.

(4) Participants must notify the division of any change of mailing address in order to receive a permit by mail.

(5) Except as provided in Subsection R657-38-7(8), only one deer may be taken in any one year.

(6)(a) Lifetime license holders may participate in the dedicated hunter program.

(b) Upon signing the certificate of registration, the lifetime license holder agrees to forego any rights to receive a general archery, general season or general muzzleloader permit as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general season or general muzzleloader permit.

(d) Lifetime license holders may join the dedicated hunter program at half of the original cost of the program.

(7) A participant may not exchange or surrender dedicated hunter permits for any other buck deer permits once the dedicated hunter permit is issued and any of the specified general hunts have begun.

R657-38-5. Education Course.

(1)(a) The division shall provide an annual education course.

(b) The participant must attend two education courses during the three-year period.

(c) Completion of an education course is mandatory prior to obtaining a certificate of registration for the program.

(2)(a) The education course shall explain the program in detail to give a prospective participant a reasonable understanding of the program as well as hunter ethics and wildlife management principles.

(3) Education courses are scheduled by regional division offices.

(4) Proof of having completed the education course is provided to the prospective participant upon completion of the education course. Certificates of registration are not issued without verification of having completed the education course.

R657-38-6. Wildlife Projects.

(1)(a) Each participant in the program shall:

(i) provide no fewer than eight hours of service by August 1 annually working on a wildlife project or other division approved program or activity; or

(ii) pay a fee of $18.75 for each hour not completed.

(b) Residents may not substitute more than 16 of the 24 total required service hours. Nonresidents may substitute all of the 24 total required service hours.

(c) The division may, upon request, approve a person who is physically unable to provide service by working on a wildlife project to provide other forms of service.

(2) Wildlife projects shall be designed by the division, or any other individual or entity and pre-approved by the division.

(3)(a) Wildlife projects may occur anytime during the year as determined by the division.

(b) The division shall publicize the dates, times, locations and description of approved projects and activities at regional offices.

(4) Participants shall sign up at least two weeks before the date of the wildlife project or activity by notifying a regional division office.

(5) Proof of the number of hours worked shall be provided to the participant.

(6) If a participant fails to fulfill the service requirement for any year of participation, the participant will not be issued a dedicated hunter permit for that year. The participant may obtain a permit for subsequent years upon completion of the service requirements due or payment of the fee in lieu thereof.

(7) The wildlife project manager shall keep a receipt of all participants who attend the wildlife project and the number of hours worked. A copy of the receipt shall be returned by the participant for record keeping purposes.

R657-38-7. Obtaining Other Permits.

(1) Participants may apply for or obtain limited entry, cooperative wildlife management unit or area conservation buck deer permits as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(2) If the participant obtains a limited entry, cooperative wildlife management unit or area conservation general season buck deer permit, the participant may use the permit in the prescribed area:

(a) provided the participant surrenders any dedicated hunter permit prior to the opening day of the general archery buck deer season;

(b) during the season dates listed on the permit; and

(c) during the dates prescribed for the general archery, general season and general muzzleloader hunts.

(3) The division may exclude multiple season opportunities on specific units due to extenuating circumstances on that specific unit.

(4) If the participant is successful in drawing a limited entry archery or muzzleloader buck deer permit, the participant may use the permit in the prescribed area during the season dates listed on the permit.

(5) The permit must be on the person while hunting.

(6) Obtaining a limited entry, cooperative wildlife management unit or area conservation buck deer permit does not authorize a participant to take an additional deer.

(7) Participants who draw a cooperative wildlife management unit permit may hunt on the cooperative wildlife management unit only during the dates determined by the landowner/operator.

(8)(a) Participants may apply for or obtain antlerless deer permits as provided in Rule R657-5 and the Antlerless Addendum to the proclamation of the Wildlife Board for taking big game.

(b) Antlerless permits do not count against the number of tags issued pursuant to this program.

R657-38-8. Reporting Requirements.

(1) Each participant must annually report to the division:

(a) whether a deer was taken; and

(b) any other information requested by the division.

(2) The report must be submitted to the division annually by January 1.

(3) Any dedicated hunter buck deer permit and tag that is not used to tag a deer must be returned to the division with the report. If the unused tag is not submitted with the report, the permit shall be considered to have been filled.

(4) The division shall make report forms available to participants.

R657-38-9. Contractual Obligations.

(1) In addition to incorporating the provisions of this rule, the certificate of registration shall expressly state the terms of the program including the following:

(a) The participant shall agree to perform the required service hours working for the division or other organizations as approved by the division. The hours shall be completed during the times prescribed by the division. If the participant is unable to perform the required service hours, a fee of $18.75 shall be paid for each hour not completed. Residents may not substitute more than 16 of the 24 total required service hours. Nonresidents may substitute all of the 24 total required service hours. The service hours shall be performed or a fee paid even in the event the certificate of registration is revoked or the participant withdraws from the program. The participant shall also agree to pay court costs and attorney fees associated with collecting any unpaid balance;

(b) The participant shall agree to attend two education courses during the three-year period, one of which must be completed before the division may issue the certificate of registration for the program;

(c) The participant shall agree to attend at least one regional advisory council meeting during the three-year period of participation in the dedicated hunter program; and

(d) The participant shall agree not to purchase or obtain, or attempt to purchase or obtain, any buck deer permit in Utah, except as allowed under the provisions of this rule until after the expiration date of the certificate of registration.

(2) In addition to the terms provided in Subsection (1), the division may require the participant to agree to other provisions consistent with this rule for the administration of this program.

R657-38-10. Dedicated Hunter Program Drawing.

(1) Any unfilled dedicated hunter permit may be entered into a drawing.

(2) One limited entry deer permit and one limited entry elk permit shall be offered through the drawing for each 250 permits entered.

(3) The results of the drawing shall be published at division offices.

(4)(a) Participants shall be notified by mail of the date and location of the drawing.

(b) Successful participants are notified by mail.

(5)(a) The limited entry deer permits may be used within the boundaries of the limited entry deer hunt area and during the dates specified in the proclamation of the Wildlife Board for taking big game.

(b) The limited entry elk permits may be used within the boundaries of the limited entry hunt area and during the dates specified in the proclamation of the Wildlife Board for taking big game.

(6)(a) Successful participants shall incur the appropriate waiting period for the species drawn as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(b) Successful participants will not forfeit any bonus points as a result of drawing a permit through the dedicated hunter drawing.

R657-38-11. Revocation.

(1) A permit and tag may not be issued to any participant who:

(a) does not perform the annual service requirement;

(b) does not attend a regional advisory council meeting pursuant to Subsection R657-38-9(1)(b); or

(c) violates the terms of the certificate of registration.

(2) The division may revoke or suspend a certificate of registration as provided in Section 23-19-9.

(3) Dedicated hunters are subject to all rules and proclamations of the Wildlife Board.

KEY: wildlife, hunting, recreation, ethics
April 4, 2000 23-14-18

R657. Natural Resources, Wildlife Resources.
R657-41. Conservation and Sportsman Permits.
R657-41-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities; and

(b) sportsman permits.

(2) The division shall use all revenue derived from conservation permits for the benefit of the species for which the permit is issued.

R657-41-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a specific species, and may include an extended season, or legal weapon choice, or both, beyond the general season.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting wildlife conservation and has established tax exempt status under Internal Revenue Code, Section 501C-3 as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division to generate revenue for the benefit of the species for which the permit is authorized and issued.

(d) "Sportsman Permit" means a harvest permit authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(e) "Statewide Conservation Permit" means a permit which allows a permittee to hunt:

(i) big game species on any open unit from September 1 through December 31, except pronghorn and moose from September 1 through October 31;

(ii) turkey on any open unit from April 1 through May 31;

(iii) any other small game species on any open unit during the season authorized by the Wildlife Board;

(iv) bear on any open unit during the season authorized by the Wildlife Board for that unit; and

(v) cougar on any open unit during the season authorized by the Wildlife Board for that unit and during the season dates authorized by the Wildlife Board on any harvest objective unit that has been closed by meeting its objective.

R657-41-3. Method for Determining the Number of Conservation and Sportsman Permits.

(1) The number of conservation permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) the potential revenue that will support protection and enhancement of the species.

(2) The recommended number of conservation permits available will be based on the following table.

TABLE 1
PERMIT NUMBERS

Public Permits	Conservation Permits
2-14	1
15-24	2
25-34	3
35-44	4
45-54	5
55-70	6
71-85	7
86-100	8
101+	9

(3) One statewide conservation permit may be authorized for each big game and small game species for which limited permits are available.

(4) A limited number of area conservation permits may be authorized, with a maximum of 5% of the permits or eight permits, whichever is less, for any unit or hunt area, unless a higher number is specifically authorized by the Wildlife Board.

(5) The number of conservation and sportsman permits available for use during the following year will be determined by the Wildlife Board annually.

(6) Conservation permits shall be deducted from the number of public drawing permits.

(7) One sportsman permit may be authorized for each statewide conservation permit authorized.

R657-41-4. Obtaining Conservation Permits.

(1) Statewide and area conservation permits are available to eligible conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities.

(2) Conservation organizations may apply for conservation permits by sending an application to the division for each permit requested.

(3) The application must be submitted to the division by September 1 to be considered for the following year's conservation permits. Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a copy of the conservation organization's mission statement;

(c) verification of the conservation organization's tax exempt status under Internal Revenue Code, Section 501C-3 as amended;

(d) the name of the president or other individual responsible for the administrative operations of the conservation organization;

(e) the type of permit and species for which the permit is requested; and

(f) any requested variances for an extended season or legal weapon choice for area conservation permits.

(4)(a) Conservation organizations must include the information as provided in Subsection (b) or (c).

(b) The estimated revenue expected to be returned to the division.

(i) The estimated revenue must be based on 90% of the auction or fund raising activity amount being submitted to the division, or the recommended minimum amount listed in the following table, whichever is greater.

(ii) The basis for the estimated revenue to the division must include the conservation organization's experience in similar activities, and details of the marketing plan.

(iii) The remaining 10% of the auction or fund raising activity amount may be retained by the conservation organization for administrative expenses. If the conservation organization is paying the permit and Wildlife Habitat Authorization fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization.

TABLE 2
RECOMMENDED MINIMUM PERMIT BID AMOUNT

Species	Statewide	Area
Rocky Mountain Bighorn (Ram)	$40,000	$20,000
Desert Bighorn (Ram)	30,000	20,000
Buck Deer	10,000	2,000
Bull Elk	10,000	4,000
Bull Moose	10,000	3,000
Bison (Hunter's Choice)	5,000	5,000
Rocky Mountain Goat (Hunter's Choice)	5,000	3,000
Buck Pronghorn	2,000	1,000
Black Bear	2,000	1,000
Cougar	2,000	500
Turkey	350	250

(c) A specific project proposal that includes:

(i) a schedule for project completion;

(ii) the benefits to the affected species;

(iii) justification for the conservation organization retaining more than ten percent of the revenue, showing increased benefit to the species, over remitting the funds to the division. Under this option, the division must receive the cost of the permit.

(iv) Proposals which integrate well with the division's species plans and objectives will be given emphasis in the evaluation.

(5) An application which is incomplete or completed incorrectly may be rejected.

(6) The application of a conservation organization that has not fully reported on the preceding years conservation permits may be rejected.

(7) The division shall recommend the conservation organization to receive each of the conservation permits based on:

(a) first, the bid amount pledged to the species, adjusted by:

(i) the performance of the organization over the previous two years in meeting proposed bids;

(ii) if returning the bid amount to the division, the percent of the proposed bid, at least 90%, returned to the division; and

(iii) if retaining the bid amount for projects, the increased monetary benefit of the projects, which cannot include any other conservation permit revenue or division funding sources, at least 100% of the bid amount, multiplied by the percent the project integrates with species plans and objectives;

(b) second, if two or more conservation organizations are tied using the criteria in Subsection (a), the closeness of the organization's purpose to the species of the permit; and

(c) third, if two or more conservation organizations are tied using the criteria in Subsection (a) and (b), the geographic closeness of the organization to the location of the permit.

(8) Between the time the division recommends that a conservation permit be awarded to a conservation organization and the time the Wildlife Board approves that recommendation, a conservation organization may withdraw their application for any given permit or exchange their application with another conservation organization without penalty, provided the bid amount upon which the permit application was evaluated is not changed.

(9) The Wildlife Board will make the final assignment of conservation permits at a meeting prior to December 1 annually, based on the:

(a) division recommendation;

(b) benefit to the species;

(c) historical contribution of the organization to the conservation of wildlife; and

(d) previous performance of the conservation organization.

(10) The division and conservation organization receiving the permits shall enter into a contract.

(11)(a) The conservation organization receiving permits shall certify that the permits are distributed by lawful means.

(b) The conservation organization must notify the division of the proposed permit recipient within 10 days of the recipient selection or the permit may be forfeited.

(c) If a person is selected by a qualified organization to receive a conservation permit and is also successful in obtaining a permit for the same species in the same year through the Bucks, Bulls and Once-In-A-Lifetime Drawing, that person may designate another person to receive the conservation permit, provided the conservation permit has not been issued by the division to the first selected person.

(d) Except as otherwise provided under Subsection (c), a person designated by a conservation organization as a recipient of a conservation permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(12) By September 1 annually, the conservation organization receiving the permit shall report to the division the distribution of each permit and the status of each project contained in the application.

R657-41-5. Obtaining Sportsman Permits.

(1) One sportsman permit is offered to residents through a drawing for each of the following species:

(a) desert bighorn (ram);

(b) bison (hunter's choice);

(c) buck deer;

(d) bull elk;

(e) Rocky Mountain goat (hunter's choice)

(f) bull moose; and

(g) buck pronghorn.

(2) The following information is provided in the proclamation of the Wildlife Board for taking big game:

(a) hunt dates;

(b) open units or hunt areas;

(c) application procedures;

(d) fees; and

(e) deadlines.

R657-41-6. Using a Conservation or Sportsman Permit.

(1)(a) A conservation or sportsman permit allows the recipient to take only the species for which the permit is issued.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(2) The recipient of a conservation or sportsman permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized:

(a) when applying for conservation or sportsman permits; or

(b) in obtaining conservation or sportsman permits.

(4) Any person who has obtained a conservation or sportsman permit is subject to all waiting periods as provided in Rules R657-5, R657-6, R657-10 and R657-33.

KEY: wildlife, wildlife permits
April 4, 2000 **23-14-18**
23-14-19

R657. Natural Resources, Wildlife Resources.

R657-46. The Use of Game Birds in Dog Field Trials and Training.

R657-46-1. Purpose and Authority.

Under authority of Sections 23-14-18, 23-14-19 and 23-17-9 this rule provides the requirements, standards, and application procedures for the use of game birds in dog field trials and training.

R657-46-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Field trial" means an organized event where the abilities of dog handlers and their dogs and are evaluated, including the ability of the dogs to hunt or retrieve game birds.

(b) "Game bird" means:

(i) crane;

(ii) blue, ruffed, sage, sharp-tailed, and spruce grouse;

(iii) chukar, red-legged, and Hungarian partridges;

(iv) pheasant;

(v) band-tailed pigeon;

(vi) bobwhite, California, Gambel's, harlequin, mountain, and scaled quail;

(vii) waterfowl;

(viii) common ground, Inca, mourning, and white-winged dove;

(ix) wild or pen-reared wild turkey of the following subspecies:

(A) Eastern;

(B) Florida or Osceola;

(C) Gould's;

(D) Merriam's;

(E) Ocellated; and

(F) Rio Grande; and

(x) ptarmigan.

(c) "Quad flyer test" means throwing pen-reared game birds by hand from four fixed stations and shooting of the pen-reared game birds one immediately after the other.

(d) "Train" or "training" means the informal handling, exercising, teaching, instructing, and disciplining of dogs in the skills and techniques of hunting and retrieving game birds characterized by absence of fees, judging, or awards.

R657-46-3. Application for a Field Trial Certificate of Registration.

(1)(a) A person may conduct a field trial using pen-reared game birds provided that person applies for and obtains a certificate of registration from the Division of Wildlife Resources, except as provided in Subsection (b).

(b) A person may conduct a field trial using pen-reared game birds on a commercial hunting area without obtaining a certificate of registration.

(2) Applications are available at any division office.

(3) The application must include written permission from the owner, lessee, or land management agency of the property where the field trial is to be conducted.

(4)(a) Applications must be submitted to the appropriate regional division office where the field trial is being held.

(b) Applications must be received at least 45 days prior to the date of the field trial.

(5) The division will not approve any application for an area where, in the opinion of the division, the field trial or the release of pen-reared game birds interferes with wildlife, wildlife habitat or wildlife nesting periods.

(6) Field trials may be held only during the dates and within the area specified on the field trial certificate of registration.

R657-46-4. Use of Pen-Reared Game Birds for Field Trials.

(1) Legally acquired pen-reared game birds may be possessed or used for field trials.

(2) Any person using pen-reared game birds must have an invoice or bill of sale in their possession showing lawful personal possession or ownership of such birds.

(3) Pen-reared game birds may not be imported into Utah without a valid veterinary health certificate as required in Rules R58-1 and R657-4.

(4)(a) Each pen reared game bird must be marked with an aluminum leg band or other permanent marking before being released in the field trial, except as provided in Subsection (d).

(b) Aluminum leg bands may be purchased at any division office.

(c) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.

(d) Each pen-reared game bird used in a field trial that is conducted on a commercial hunting area may be released without marking each pen-reared game bird, as with an aluminum leg band.

(5) Pen-reared game birds used for a field trial may be released only on the property specified in the certificate of registration where the field trial is conducted.

(6) After release, pen-reared game birds may be taken:

(a) by the person who released the pen-reared game birds, or by any person participating in the field trial; and

(b) only during the dates of the field trial event as specified in the certificate of registration.

(7) Wild game birds may be taken only during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.

(8) Pen-reared game birds acquired for a field trial that are not released may be held in possession:

(a) no longer than 60 days; or

(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657-4.

(9) Pen-reared game birds that leave the property where the field trial is held at the end of the field trial shall become the property of the state of Utah and may not be taken, except during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.

R657-46-5. Use of Pen-Reared Game Birds for Dog Training.

(1) A person may train a dog using legally acquired pen-reared game birds provided:

(a) the person using the pen-reared game birds has an invoice or bill of sale in their possession showing lawful personal possession or ownership of the pen-reared game birds;

(b) each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released for training, except as provided in Subsection (3)(a); and

(c) any pheasant released during training must be marked with a visible streamer or tape at least 12 inches in length before being released, and any pheasant killed during training must have the streamer or tape attached when killed.

(2) Aluminum leg bands may be purchased at any division office.

(3)(a) Each pen-reared game bird used for dog training that is conducted on a commercial hunting area may be released without marking each pen-reared game bird with an aluminum leg band or other permanent marking.

(b) Any pheasant released during training on a commercial hunting area may be released without marking as provided in Subsections (1)(b) and (1)(c).

(4) The training may not consist of more than four dogs at any time, except the training may consist of more than four dogs provided:

(a) the dogs exceeding four in number are eight months of age or younger; and

(b) no live ammunition is in possession of the person or persons engaged in training the dogs.

(5) A person or group of persons may not release more than ten pen-reared game birds per day or three pen-reared game birds per dog per day, whichever is greater.

(6) A person or group of persons may not use more than three firearms at any time, except four firearms may be used when training retrievers using the American Kennel Club quad flyer test.

(7) Pen-reared game birds acquired for training that are not released may be held in possession:

(a) no longer than 60 days; or

(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657-4.

(8) Pen-reared game birds that are not recovered on the day of the training or pen-reared game birds that escape shall become property of the state of Utah and may not be recaptured or taken, except during legal hunting seasons as specified in the Upland Game and Waterfowl proclamations of the Wildlife Board.

(9) A person training dogs on official dog training areas, designated by the division, is not required to comply with Subsection (1)(c) or Subsections (4), (5) or (6).

R657-46-6. Use of Wild Game Birds for Dog Training.

(1) A person may train a dog on wild game birds provided:

(a) the dog, or the person training the dog, may not harass, catch, capture, kill, injure, or at any time, possess any wild game birds, except during legal hunting seasons as provided in the Upland Game or Waterfowl proclamations of the Wildlife Board;

(b) the dogs are not on any state wildlife management or waterfowl management areas as specified in Rule R657-6, except during open hunting seasons or as posted by the division;

(c) the person training a dog on wild game birds, except during legal hunting seasons:

(i) must not possess a firearm, except a pistol firing blank cartridges;

(ii) must comply with city and county ordinances pertaining to the discharge of any firearm;

(iii) must obtain written permission from the landowner for training on properly posted private property.

KEY: wildlife, birds, dogs, training
April 4, 2000 **23-14-18**
23-14-19

R686. Professional Practices Advisory Commission, Administration.

R686-100. Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings.

R686-100-1. Definitions.

A. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional, criminal, or incompetent conduct; is unfit for duty; has lost certification in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence.

B. "Applicant for a license" means a person seeking a new license or seeking reinstatement of an expired, surrendered, suspended, or revoked license.

C. "Board" means the Utah State Board of Education.

D. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.

E. "Commission" means the Professional Practices Advisory Commission as defined and authorized under Section 53A-6-301 et seq.

F. "Chair" means the Chair of the Commission.

G. "Complaint" means a written allegation or charge against an educator.

H. "Complainant" means the Utah State Office of Education.

I. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.

J. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training, to obtain a license.

K. "Executive Committee" means a subcommittee of the Commission consisting of the Executive Secretary, Chair, Vice-Chair, and one member of the Commission at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by the Commission. Substitutes may be appointed from within the Commission by the Executive Secretary as needed.

L. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of the Commission.

M. "Hearing" means a proceeding in which allegations made in a complaint are examined, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing the hearing officer, after consulting with members of the Commission assigned to assist in the hearing, prepares a hearing report and submits it to the Executive Secretary.

N. "Hearing Officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of the Commission to manage the proceedings of a hearing. The hearing officer may not be an acting member of the Commission. The hearing officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended disposition of a case.

O. "Hearing Panel" means a hearing officer and three or more members of the Commission agreed upon by the Commission to assist the hearing officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.

P. "Hearing report" means a report prepared by the hearing officer with the assistance of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.

Q. "Informant" means a person who submits information to the Commission concerning alleged misconduct by a person who may be subject to the jurisdiction of the Commission.

R. "Investigator" means a person who is knowledgeable about matters which could properly become part of a complaint before the Commission, as well as investigative procedures and rules and laws governing confidentiality, who is appointed by the Utah State Office of Education's Investigations Unit at the request of the Executive Secretary to investigate an allegation of misconduct.

S. "Jurisdiction" means the legal authority to hear and rule on a complaint.

T. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for its members regarding persons whose licenses have been suspended or revoked.

U. "Office" means the Utah State Office of Education.

V. "Party" means the complainant or the respondent.

W. "Recommended disposition" means a recommendation for resolution of a complaint.

X. "Request for agency action" means a document prepared by the Executive Secretary containing one or more allegations of misconduct by an educator, a recommended course of action, and related information.

Y. "Respondent" means the party against whom a complaint is filed.

Z. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail or by other means reasonably calculated, under all of the circumstances, to apprise the interested person or persons to the extent reasonably practical

or practicable of the information contained in the document. Service of a complaint upon an educator shall be by mail to the address of the educator as shown upon the records of the Commission.

AA. "State" means the United States or one of the United States; a foreign country or one of its subordinate units occupying a position similar to that of one of the United States; or a territorial unit, of the United States or a foreign country, with a distinct general body of law.

BB. "Stipulated agreement" means an agreement between a respondent and the Board or a respondent and the Commission under which disciplinary action against an educator's certification status has been taken, in lieu of a hearing.

R686-100-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) which directs the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures regarding complaints against educators and certification hearings for the Commission to follow. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63-46b-1(2)(d). However, the Commission reserves the right to invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Section 63-46b as necessary to adjudicate an issue.

R686-100-3. Receipt of Allegations of Misconduct.

A. Initiating Proceedings Against an Educator: The Executive Secretary may initiate proceedings against an educator upon receiving an allegation of misconduct or upon the Executive Secretary's own initiative.

(1) An informant may be asked to submit information in writing, including the following:

(a) Name, position (e.g. administrator, teacher, parent, student), telephone number and address of the informant;

(b) Name, position (e.g. administrator, teacher, candidate), and if known, the address and telephone number of the educator against whom the allegations are made;

(c) The allegations and supporting information;

(d) A statement of the relief or action sought from the agency;

(e) Signature of the informant and date.

(2) If an informant submits a written allegation of misconduct as provided in Section R686-100-3A(1) above, the informant shall be told he may receive notification of final actions taken by the Commission or the Board regarding the allegations by filing a written request for information with the Executive Secretary.

(3) Allegations received through telephone calls, letters, newspaper articles, notices from other states or other means may also form the basis for initiating proceedings against an educator.

R686-100-4. Review of Request for Agency Action.

A. Initial Review: Upon reviewing the request, the Executive Secretary or the Executive Committee or both shall recommend one of the following to the Commission:

B. Dismiss: If the Executive Committee determines that the Commission lacks jurisdiction or that the request for agency action does not state a cause of action which the Commission should address, the Executive Committee shall recommend that the Commission dismiss the request. The informant shall be served with notice of the action. If the informant believes that the dismissal has been made in error, the informant may request review by the State Superintendent of Public Instruction within 10 days of the mailing date of the Notice of Dismissal. The Superintendent's decision relative to the dismissal is final.

C. Initiate an Investigation: If the Executive Secretary and the Executive Committee determine that the Commission has jurisdiction and that the request states a cause of action which may be appropriately addressed by the Commission, the Executive Secretary shall ask the Investigations Unit to appoint an investigator to gather evidence relating to the allegations. The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations, including to the extent reasonably practicable all persons specifically named in the request for agency action, and prepare a written report of the findings of the investigation. Should the investigator discover evidence of any additional allegation which should have been included in the original request, it may be included in the investigation report. The completed report shall be submitted to the Executive Secretary, who shall review the report with the Commission. The investigation report shall become part of the permanent case file.

D. Prior to the initiation of any investigation, the Executive Secretary shall send a letter to the educator to be investigated and a copy of the letter to the employing school district or to the district of most recent employment, with information that an investigation has been initiated.

E. Secondary Review: The Executive Committee shall review the investigation report and upon completing its review shall recommend one of the following to the Commission:

(1) Dismiss: If the Executive Committee determines no further action should be taken, the Executive Committee shall recommend to the Commission to dismiss the request for agency action as provided in Section R686-100-4B, above; or

(2) Prepare and Serve COMPLAINT: If the Executive Committee determines further action is appropriate, the Executive Committee shall recommend to the Commission to direct the Executive Secretary to prepare and serve a complaint and a copy of these rules upon the respondent. The complaint shall have a heading similar to that used for the request for agency action, and shall include in the body:

(a) A statement of the legal authority and jurisdiction under which the action is being taken;

(b) A statement of the facts and allegations upon which the complaint is based;

(c) Other information which the Commission believes to be necessary to enable the respondent to understand and address the allegations;

(d) A statement of the potential consequences should the allegations be found to be true;

(e) A statement that, if the respondent wishes to respond to the complaint or request a hearing, or discuss a stipulated agreement, a written response shall be filed with the Executive

Secretary of the Professional Practices Advisory Commission, 250 East 500 South, Salt Lake City, Utah 84111 within 30 days of the date when the complaint was mailed to the respondent, and the potential consequences should the respondent default by failing to respond to the complaint within the designated time;

(f) Notice that, if a hearing is requested, the hearing shall be scheduled not less than 25 days, nor more than 180 days, after receipt of the respondent's response and hearing request by the Executive Secretary, unless a different date is approved by the Commission for good cause shown or is agreed upon by both parties in writing.

(3) Provide the Commission with notice of the action taken.

F. RESPONSE to the complaint: If the respondent wishes to respond to the complaint, the respondent shall submit a written response signed by the respondent or his representative to the Executive Secretary within 30 days of the mailing date of the complaint. The response may include a request for a hearing or a stipulated agreement and shall include:

(1) The file number of the complaint;

(2) The names of the parties;

(3) A statement of the relief that the respondent seeks; and

(4) A statement of the reasons that the relief requested should be granted.

(5) Final Review: As soon as reasonably practicable after receiving the response, or following the passage of the 30 day response period if no response is received, the Executive Secretary shall review any response received, the investigative report, and other relevant information with the Executive Committee. The Executive Committee shall then recommend one of the following to the Commission:

(a) Enter a Default: If the respondent fails to file a response, fails to request a hearing, fails to request a stipulated agreement within 30 days after service of the complaint, or surrenders a license in the face of allegations of misconduct without benefit of a stipulated agreement, the Executive Committee shall recommend to the Commission to enter the respondent's default and direct the Executive Secretary to prepare findings in default and a recommended disposition for submission to the Commission in accordance with Section R686-100-16.

(b) Dismiss the Complaint: If the Executive Committee determines that there are insufficient grounds to proceed with the complaint, the Executive Committee shall recommend to the Commission that the complaint be dismissed. If the Commission votes to uphold the dismissal, the informant and respondent shall each be served with notice of the dismissal. If the informant believes that the dismissal has been made in error the informant may request review by the State Superintendent of Public Instruction within 10 days of service of notice of the dismissal. The Superintendent's decision concerning the dismissal is final.

(c) Schedule a Hearing: If the respondent requests a hearing, the Commission shall direct the Executive Secretary to schedule a hearing as provided in Section R686-100-5.

(d) Respond to a request for a stipulated agreement: If the respondent requests to enter into a stipulated agreement, the Executive Secretary shall inform the Commission that the Commission may reject the request or authorize the Executive Secretary to meet with the respondent to prepare recommendations for a stipulated agreement.

(i) A stipulated agreement shall, at minimum, include the following:

(A) A summary of the facts, the allegations, the evidence relied upon by the Commission in its decision, and the respondent's response;

(B) A statement that the respondent has chosen to surrender his license rather than contest the charges in a hearing;

(C) A commitment that the respondent shall not provide professional services in a public school in any state or otherwise seek to obtain or use a license in any state unless or until the respondent first obtains a valid Utah license or clearance from the Board to obtain such a license;

(D) Provision for surrender of respondent's license;

(E) Acknowledgment that the surrender and the stipulated agreement will be reported to other states through the NASDTEC Educator Information Clearinghouse; and

(F) Other relevant provisions applicable to the case, such as remediation, counseling, and conditions--if any--under which the respondent could seek restoration of certification.

(ii) The stipulated agreement shall be forwarded to the Commission for consideration.

(iii) If the Commission rejects the request or the stipulated agreement, the respondent shall be served with notice of the decision, which shall be final, and the proceedings shall continue from the point under these procedures at which the request was made, as if the request had not been submitted.

(iv) If the Commission accepts the stipulated agreement, the agreement shall be forwarded to the Board for consideration.

(v) If the Board rejects the agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the request was made, as if the request had not been submitted.

(e) Recommend that the Commission direct the Executive Secretary to take appropriate disciplinary action against an educator which may include: an admonishment, a letter of warning, or a written reprimand. Documentation of this disciplinary action shall be sent to the respondent's employing school district or to a district where the respondent finds employment. This disciplinary action may be appealed to the Superintendent of Public Instruction, consistent with R686-100-18.

G. Surrender:

(1) Should an educator surrender his license, the surrender shall have the effect of revocation unless otherwise designated by the Commission;

(2) The Board shall receive official notification of the surrender at an official Board meeting; and

(3) The Executive Secretary shall enter findings in the educator's certification file explaining the circumstances of the surrender.

(4) Surrender of an educator's license is not a final disposition. Surrender shall include a stipulated agreement or findings of fact to complete the educator's misconduct file. The Board shall also take action to suspend or revoke a license following a surrender.

R686-100-5. Hearing Procedures.

A. Scheduling the Hearing: The Commission shall agree upon Commission panel members, and the Executive Secretary shall appoint a hearing officer from among a list of hearing officers approved by the Commission, and schedule the date, time, and place for the hearing. The date for the hearing shall be scheduled not less than 25 days nor more than 180 days from the date the response is received by the Executive Secretary. If exceptional circumstances exist which make it impracticable for a party to be present in person, the Executive Secretary may, with the consent of the parties, permit participation by electronic means. The required scheduling periods may be waived by mutual written consent of the parties or by the Commission for good cause shown.

B. Change of Hearing Date:

(1) A request for change of hearing date shall be submitted in writing and received by the Executive Secretary at least five days prior to the scheduled date of the hearing. The request may originate from either party and shall show cause.

(2) The Executive Secretary shall make the determination of whether the cause stated in the request is sufficient to warrant a change of hearing date.

(a) If the cause is found to be sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

(b) If the cause is found to be insufficient, the Executive Secretary shall immediately notify the party making the request and the hearing shall proceed as originally scheduled.

(c) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for exceptional circumstances.

R686-100-6. Appointment and Duties of the Hearing Panel.

A. Hearing Officer: The Executive Secretary shall appoint a hearing officer at the request of the Commission to chair the hearing panel and conduct the hearing. The hearing officer:

(1) May require the parties to submit briefs and lists of witnesses prior to the hearing;

(2) Shall preside at the hearing and regulate the course of the proceedings;

(3) May administer oaths to witnesses as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(4) May take testimony, rule on questions of evidence, and ask questions of witnesses to clarify specific issues;

(5) Shall prepare a hearing report at the conclusion of the proceedings in consultation with other panel members.

B. Commission Panel Members: The Commission shall agree upon three or more Commission members to serve as Commission members of the hearing panel. As directed by the Commission, former Commission members who have served on the Commission within the three years prior to the date set for the hearing may be used as panel members. The majority of panel members shall be current Commission members.

(1) The majority of a panel shall be educators.

(2) If the respondent is a teacher, at least one panel member shall be a teacher. If the respondent is an administrator, at least one panel member shall be an administrator unless the respondent objects to the configuration of the panel.

(3) Duties of the Commission panel members include:

(a) Assisting the hearing officer by providing information concerning common standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(b) Asking questions of all witnesses to clarify specific issues;

(c) Reviewing all briefs and evidence presented at the hearing;

(d) Assisting the hearing officer in preparing the hearing report.

(4) The panel members shall receive for review relevant written materials including the initial complaint and briefs if ordered by the hearing officer, at least 30 minutes prior to the hearing.

(5) The Executive Secretary may make an emergency substitution of a Commission panel member for cause with the agreement of the parties. The agreement should be in writing but if time does not permit written communication of the agreement to reach the Executive Secretary prior to the scheduled time of the hearing, an Acceptance of Substituted Hearing Panel Member shall be signed by the parties prior to commencement of the hearing.

C. Disqualification of a panel member:

(1) Hearing Officer:

(a) A party may seek disqualification of a hearing officer by submitting a written request for disqualification to the Executive Secretary, which request must be received not less than 15 days before a scheduled hearing. The Executive Secretary shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and sufficient, shall appoint a new hearing officer and, if necessary, reschedule the hearing.

(b) If the Executive Secretary denies the request, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(c) The decision of the State Superintendent is final.

(d) Failure of a party to meet the time requirements of Section R686-100-6C(1) shall result in denial of the request or appeal; if the Executive Secretary fails to meet the time requirements, the request or appeal shall be approved.

(2) Commission panel member:

(a) A party may seek disqualification of a Commission panel member by submitting a written request for disqualification to the hearing officer, which request must be received not less than 15 days before a scheduled hearing. The hearing officer shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and compelling, shall disqualify the panel member. If the disqualification leaves the hearing panel with fewer than three Commission panel members, the Commission shall appoint a replacement and the hearing officer shall, if necessary, reschedule the hearing.

(b) If the hearing officer denies the request, the party

requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the hearing officer to disqualify the panel member.

(c) If a disqualification leaves the hearing panel with fewer than three Commission panel members, the Commission shall agree upon a replacement and the hearing officer shall, if necessary, reschedule the hearing.

(d) The decision of the State Superintendent is final.

(e) Failure of a party to meet the time requirements of Section R686-100-7C(2) shall result in denial of the request or appeal; if the hearing officer fails to meet the time requirements, the request or appeal shall be approved.

R686-100-7. Preliminary Instructions to Parties to a Hearing.

A. Not less than 20 days before the date of a hearing the Executive Secretary shall provide the parties with the following information:

(1) Date, time, and location of the hearing;

(2) Names and school district affiliations of the Commission members on the hearing panel, and the name of the hearing officer;

(3) Procedures for objecting to any member of the hearing panel; and

(4) Procedures for requesting a change in the hearing date.

B. Not less than 15 days before the date of the hearing, the hearing officer may direct the respondent and the complainant to serve the following upon the other party and submit a copy and proof of service to the hearing officer:

(1) A brief setting forth that party's position regarding the allegations, including relevant laws, rules, and precedent;

(2) The name of the person who will represent the party at the hearing, a list of witnesses who will be called, a summary of the testimony which each witness is expected to present, and a summary of documentary evidence which will be submitted. If either party fails to comply with identification of witnesses or documentary evidence in a fair and timely manner and consistent with the provisions of this rule, the hearing officer may limit either party's presentation of witnesses and documentary evidence at the hearing.

C. If the hearing officer requests and receives any of the above documents, he shall provide a copy of the documents to each of the Commission panel members for review at least one hour prior to the hearing.

D. If a party fails to comply in good faith with a directive of the hearing officer under Section R686-100-7A, including time requirements for service, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances including, in extreme cases of noncompliance, entry of a default against the offending party.

E. Parties shall provide materials to the hearing officer, panel members and Commission as directed under this rule. Materials shall not be provided directly to panel members until and unless parties are so directed by the hearing officer.

R686-100-8. Hearing Parties' Representation.

A. Complainant: The Complainant shall be represented by a person appointed by the Investigations Unit of the Utah State Office of Education.

B. Respondent: A respondent may represent himself or be represented, at his own cost, by another person of his choosing.

C. The informant has no right to individual representation at the hearing or to be present or heard at the hearing unless called as a witness.

R686-100-9. Discovery Prior to a Hearing.

A. Discovery shall be permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the appointed hearing officer.

B. Discovery, especially burdensome or unduly legalistic discovery, may not be used to delay a hearing.

C. Discovery may be limited by the hearing officer at his discretion or upon a motion by either party. The hearing officer makes the final determination as to the scope of discovery.

D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued upon request at least five working days prior to the hearing by the Executive Secretary in accordance with Section 53A-6-603 when requested by either party or any of the panel members.

E. Either party or its representative may request the names of witnesses who have been asked to testify for the opposing party and to receive a copy of or examine all documents and exhibits that the opposing party intends to present as evidence during the hearing.

F. No witness or evidence may be presented at the hearing if the opposing party has requested to be notified of such information and has not been fairly apprised at least five days prior to the hearing. The parties may waive such time period only by written agreement.

G. No expert witness report or testimony may be presented at the hearing unless the requirements of Section R686-100-13 have been met.

R686-100-10. Burden and Standard of Proof for Commission Proceedings.

A. In matters other than those involving applicants for certification, and excepting the presumptions under Section R686-100-14G, the complainant shall have the burden of proving that action against the license is appropriate.

B. An applicant for certification shall bear the burden of proving that certification is appropriate.

C. Standard of proof: The standard of proof in all Commission hearings is a preponderance of the evidence.

R686-100-11. Deportment.

A. Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during hearings, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer. The hearing officer may expel persons from the hearing room who fail to conduct themselves in an appropriate manner and may, in response to extreme instances of noncompliance, disallow testimony or declare an offending party to be in default.

B. Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process shall not harass, intimidate or pressure witnesses or other hearing participants, nor shall they direct others to harass, intimidate or pressure witnesses or participants.

R686-100-12. Hearing Record.

A. The hearing shall be tape recorded at the Commission's expense, and the tapes shall become part of the permanent case record, unless otherwise agreed upon by all parties.

B. Individual parties may not make recordings of the proceedings without notice to and consent of the Executive Secretary.

C. Any party, at his own expense, may have a person approved by the Commission prepare a transcript of the hearing.

D. If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

E. All evidence and statements presented at a hearing shall become part of the permanent case file and shall not be removed except by order of the Board.

F. Taped proceedings may be reviewed upon request of a party under supervision of the Executive Secretary and only at the State Office of Education.

R686-100-13. Expert Witnesses in Commission Proceedings.

A. A party may call an expert witness at its own expense. Notice of intent of a party to call an expert witness, the identity and qualifications of such expert witness and the purpose for which the expert witness is to be called shall be provided to the hearing officer and the opposing party at least 20 days prior to the hearing date.

B. The hearing officer may appoint any expert witness agreed upon by the parties or of the hearing officer's own selection. An expert so appointed shall be informed of his duties by the hearing officer in writing, a copy of which shall become part of the permanent case file. The expert shall advise the hearing panel and the parties of his findings and may thereafter be called to testify by the hearing panel or by any party. He shall be subject to cross-examination by each party or by any of the hearing panel members.

C. Defects in the qualifications of expert witnesses, once a minimum threshold of expertise is established, go to the weight to be given their testimony and not to its admissibility.

D. Experts who are members of the Complainant's staff or a school district staff may testify and have their testimony considered as part of the record along with that of any other expert.

E. Any report of an expert witness which a party intends to introduce into evidence shall be provided to the opposing party at least 10 days prior to the hearing date.

R686-100-14. Evidence and Participation in Commission Proceedings.

A. The hearing officer may not exclude evidence solely because it is hearsay.

B. The hearing officer shall afford each party the opportunity to produce witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

C. If a party intends to submit documentary evidence, the party intending to present such evidence shall provide one copy to each member of the hearing panel at least one hour prior to the hearing, and one copy to the opposing party.

D. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

E. In any case involving allegations of child abuse or of a sexual offense against a child, upon request of either party or by a member of the hearing panel, the hearing officer may determine whether a significant risk exists that the child would suffer serious emotional or mental harm if required to testify in the respondent's presence, or whether a significant risk exists that the child's testimony would be inherently unreliable if required to testify in the respondent's presence. If the hearing officer determines either to be the case, then the child's testimony may be admitted in one of the following ways:

(1) An oral statement of a victim or witness younger than 18 years of age which is recorded prior to the filing of a complaint shall be admissible as evidence in a hearing regarding the offense if:

(a) No attorney for either party is in the child's presence when the statement is recorded;

(b) The recording is visual and aural and is recorded on film or videotape or by other electronic means;

(c) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered; and

(d) Each voice in the recording is identified.

(2) The testimony of any witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and be transmitted by closed circuit equipment to another room where it can be viewed by the respondent. All of the following conditions shall be observed:

(a) Only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the child may be with the child during his testimony.

(b) The respondent may not be present during the child's testimony;

(c) The hearing officer shall ensure that the child cannot hear or see the respondent;

(d) The respondent shall be permitted to observe and hear, but not communicate with, the child; and

(e) Only hearing panel members and the attorneys may question the child.

(3) The testimony of any witness or victim younger than 18 years of age may be taken outside the hearing room and recorded if the provisions of Sections R686-100-14E(2)(a)(b)(c) and (e) and the following are observed:

(a) The recording is both visual and aural and recorded on film or videotape or by other electronic means;

(b) The recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;

(c) Each voice on the recording is identified; and

(d) Each party is given an opportunity to view the recording before it is shown in the hearing room.

(4) If the hearing officer determines that the testimony of a child will be taken under Section R686-100-14E(1)(2) or (3) above, the child may not be required to testify in any proceeding where the recorded testimony is used.

F. On his own motion or upon objection by a party, the hearing officer:

(1) May exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;

(2) Shall exclude evidence that is privileged under law applicable to administrative proceedings in Utah unless waived;

(3) May receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

(4) May take official notice of any facts that could be judicially noticed under judicial or administrative laws of Utah, or from the record of other proceedings before the agency.

G. Presumptions:

(1) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor child if the person has:

(a) Been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;

(b) Failed to defend himself against such a charge when given a reasonable opportunity to do so; or

(c) Voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.

(2) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has:

(a) Been convicted of a felony;

(b) Been charged with a felony and subsequently convicted of a lesser related charge pursuant to a plea bargain or plea in abeyance; or

(c) Lost certification in another state through revocation or suspension, or through surrender of certification or allowing a license to lapse in the face of an allegation of misconduct, if the person would not currently be eligible to regain certification in that state.

H. The Hearing Officer may confer with the Executive Secretary or the panel members or both while preparing the Hearing Report. The Hearing Officer may request the Executive Secretary to confer with the Hearing Officer and panel following the hearing.

R686-100-15. Hearing Report.

A. Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials permitted by the hearing officer, the hearing officer shall prepare, sign and issue a Hearing Report consistent with the recommendations of the panel that includes:

(1) A detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted. Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence;

(2) A statement of relevant precedent;

(3) A statement of applicable law and rule;

(4) A recommended disposition of the Commission panel members which shall be one of the following:

(a) Dismissal of the Complaint: The hearing report shall indicate that the complaint should be dismissed and that no further action should be taken.

(b) Warning: The hearing report shall indicate that respondent's conduct is deemed unprofessional and that the hearing report should constitute an official warning. The hearing report shall indicate that no further action concerning the complaint should be taken, but that the complaint and disposition could be considered should the respondent's conduct be brought into question in the future.

(c) Reprimand: The hearing report shall indicate that the respondent's conduct is deemed unprofessional and that the hearing report should constitute an official reprimand. The hearing report shall indicate that the employing school board shall be notified of the reprimand and that record of the reprimand shall be made on all Utah State Board of Education Certification records maintained in the certification file on the respondent. The hearing report should also include a recommendation for how long the reprimand shall be maintained in the respondent's file and conditions under which it could be removed.

(d) Probation: The hearing report shall determine that the respondent's conduct was unprofessional, that the respondent shall not lose his certification, but that a probationary period is appropriate. If the report recommends probation, the report shall designate:

(i) a probationary time period;

(ii) conditions that can be monitored;

(iii) a person or entity to monitor a respondent's probation;

(iv) a statement providing for costs of probation.

(v) whether or not the respondent may work in any capacity in education during the probationary period.

A probation may be stated as a plea in abeyance: The respondent's penalty is stayed subject to the satisfactory completion of probationary conditions. The decision shall provide for discipline should the probationary conditions not be completed.

(e) Suspension: The hearing report shall recommend to the State Board of Education that the license of the respondent be suspended for a specific period of time and until specified reinstatement conditions have been met before respondent may petition for reinstatement of certification. The hearing report shall indicate that, should the Board confirm the recommended decision, the respondent shall return the printed suspended license to the State Office of Education and that the Certification Section of the Utah State Office of Education will notify the employing school district, all other Utah school districts, and all other state, territorial, and national certification offices or clearing houses of the suspension in accordance with R277-514.

(f) Revocation: The hearing report shall recommend to the State Board of Education that the license of the respondent be revoked for a period of not less than five years. The hearing report shall indicate that should the Board confirm the recommended decision, the respondent shall return the revoked license to the State Office of Education and that the Certification Section of the Utah State Office of Education will notify the employing school district, all other Utah school districts, and all other state, territorial, and national certification

offices or clearing houses of the revocation in accordance with R277-514.

(5) The hearing report may recommend that the warning letter or that the reprimand remain permanently in the certification file. The hearing report shall also provide that the substance of the warning letter or reprimand or terms of probation may be communicated by designated USOE employees to prospective employers upon request.

(6) Notice of the right to appeal; and

(7) Time limits applicable to appeal.

B. Processing the Hearing Report:

(1) The hearing officer shall circulate the draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

(2) Hearing panel members shall notify the hearing officer of any changes to the report as soon as possible after receiving the report and prior to the 20 day completion deadline of the hearing report.

(3) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with the Commission.

(4) If the Commission, upon review of the hearing report, finds by majority vote, that there have been significant procedural errors in the hearing process or that the weight of the evidence does not support the conclusions of the hearing report, the Commission as a whole may direct the Executive Secretary to prepare an alternate hearing report and follow procedures under R686-100-15B(2).

(5) If the Commission finds that there have not been significant procedural errors or that recommendations are based upon a reasonable interpretation of the evidence presented at the hearing, the Commission shall vote to uphold the hearing officer's report and do one of the following:

(a) If the recommendation is for final action to be taken by the Commission, the Commission shall direct the Executive Secretary to prepare a corresponding final order and serve all parties with a copy of the order and hearing report. A copy of the order and the hearing report shall be placed in and become part of the permanent case file. The order shall be effective upon approval by the Commission.

(b) If the recommendation is for final action to be taken by the Board, the Executive Secretary shall forward a copy of the hearing report to the State Board of Education for its further action. A copy of the hearing report shall also be placed in and become part of the permanent case file.

(6) If the Commission determines that procedural errors or that the hearing officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing to the extent that an amended hearing report cannot be agreed upon, the Commission shall direct the Executive Secretary to schedule the matter for rehearing before a new hearing officer and panel.

C. Consistent with Section 63-2-301(1)(c), the final administrative disposition of all administrative proceedings, the Recommended Disposition section of the Hearing Report, of the Commission shall be public. The hearing findings/report of suspensions and expulsions shall be public information and shall be provided consistent with Section 63-2-301(1)(c). The Recommended Disposition portion of the Hearing Report of warnings, reprimands and probations (including the probationary conditions) shall be public information. All references to individuals and personally identifiable information about individuals not parties to the hearing shall be redacted prior to making the disposition public.

D. Deadlines within this section may be waived by the Commission for good cause shown.

R686-100-16. Default Procedures.

A. An order of default may be issued against a respondent under any of the following circumstances:

(1) The Executive Secretary may enter an order of default by preparing a report of default including the order of default, a statement of the grounds for default, and a recommended disposition if the respondent fails to file a response to a complaint for an additional 20 days following the time period allowed for response to a complaint under R686-100-5E.

(2) The hearing officer may enter an order of default against a respondent by preparing a hearing report including the order of default, a statement of the grounds for default and the recommended disposition if:

(a) The respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice. The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin.

(b) The respondent or the respondent's representative is guilty of serious misconduct during the course of the hearing process as provided under Section R686-100-8D.

B. The report of default or hearing report shall be forwarded to the Commission by the Executive Secretary for further action under Section R686-100-16B.

R686-100-17. Appeal.

A. Either party may appeal a final action or recommendation of the Commission by requesting review following the procedures of R277-514-3 or R277-514-4.

B. If the appeal is from a Commission recommendation for a suspension of two years or more or revocation, the appellant shall follow the procedures of R277-514-3.

C. If the appeal is from a Commission recommendation or for a suspension of less than two years or for any other issue, dismissal, or failure to discipline, the appeal shall be made directly to the Board under R277-514-4B.

D. The request for appeal shall consist of the following:

(1) name, position, and address of appellant;

(2) issue(s) being appealed; and

(3) signature of appellant.

R686-100-18. Remedies for Individuals Beyond Commission Actions.

Despite Commission or Board actions, informants or other injured parties who feel that their rights have been compromised, impaired or not addressed by the provisions of this rule, may appeal directly to district court.

R686-100-19. Application for Certification Following Denial or Loss of Certification.

A. An individual who has been denied certification or lost

certification through revocation or suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request review to consider the possibility of a grant or reinstatement of a license.

(1) The request for review shall be in writing and addressed to the Executive Secretary, Professional Practices Advisory Commission, 250 East 500 South, Salt Lake City, Utah 84111, and shall have the following heading:

TABLE 1

Jane Doe, Petitioner vs Utah State Office of Education Respondent.	Request for Agency Action Following Denial or Loss of License File no.: .....

B. The body of the request shall contain the following information:

(1) Name and address of the individual requesting review;

(2) Action being requested;

(3) Evidence of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations;

(4) Reasons for reconsideration of past disciplinary action;

(5) Signature of person requesting review.

C. The Executive Secretary shall review the request with the Commission.

(1) If the Commission determines that the request is invalid, the person requesting reinstatement shall be notified by certified mail of the denial.

(2) If the Commission determines that the request is valid, a hearing shall be scheduled and held as provided under Section R686-100-6.

D. Burden of Proof: The burden of proof for granting or reinstatement of certification shall fall on the individual seeking the license.

(1) Individuals requesting reinstatement of a suspended license must show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as undergo a criminal background check in accordance with Utah law.

(2) Individuals requesting certification following revocation shall show sufficient evidence of compliance with any conditions imposed in the past disciplinary action as well as providing evidence of qualifications for certification as if the individual had never been licensed in Utah or any other state.

(3) Individuals requesting certification following denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable.

R686-100-20. Reinstatement Hearing Procedures.

A. The individual seeking reinstatement of his license shall be the petitioner.

B. The petitioner shall have the responsibility of presenting the background of the case.

C. The petitioner shall present documentation or evidence that supports reinstatement.

D. The respondent (the State) shall present any evidence or documentation that would not support reinstatement.

E. Other evidence or witnesses shall be presented consistent with R686-100-14.

F. The appointed hearing officer shall rule on other procedural issues in a reinstatement hearing in a timely manner as they arise.

R686-100-21. Temporary Suspension of Certification Pending a Hearing.

A. If the Executive Secretary determines, after affording respondent an opportunity to discuss allegations of misconduct, that reasonable cause exists to believe that the charges will be proven to be correct and that permitting the respondent to retain certification prior to hearing would create unnecessary and unreasonable risks for children, then the Executive Secretary may order immediate suspension of the respondent's license pending final Board action.

B. Evidence of the temporary suspension may not be introduced at the hearing.

C. Notice of the temporary suspension shall be provided to other states under R277-514.

KEY: teacher certification, conduct*, hearings*
April 3, 2000 53A-6-306(1)(a)

R708. Public Safety, Driver License.
R708-20. Motor Vehicle Accident Prevention Course Standards.
R708-20-1. Authority and Purpose.

Section 31A-19a-211 provides for an appropriate reduction of automobile insurance premiums for persons 55 years of age or older who successfully complete a motor vehicle accident prevention course.

The purpose of this rule is to establish procedures and standards for agencies or organizations who may conduct motor vehicle accident prevention courses as prescribed by this section.

R708-20-2. Definitions.

"Course" means a motor vehicle accident prevention course.

"Department" means the Department of Public Safety.

"Instructor" means an individual who has been approved by the course sponsor for the purpose of conducting an approved motor vehicle accident prevention course.

"Sponsor" means an organization or agency that conducts a motor vehicle accident prevention course.

R708-20-3. Motor Vehicle Accident Course Application For Approval.

Each sponsor who proposes to offer a course to the public for insurance reduction must submit a completed application to the department for approval on a form approved by the department.

A sponsor may file an application for approval at any time.

In order to be approved, a sponsor must comply with the following requirements:

1. The course must provide for a minimum of four hours classroom instruction which must be completed within a 30-day period from the date of enrollment.

2. The course curriculum shall include, but is not limited to, the following subjects:

a. How impairment of visual and audio perception affects driving performance and how to compensate for that impairment.

b. The effects of fatigue, medications, and alcohol on driving performance, when experienced alone or in combination, and precautionary measures to prevent or offset ill effects.

c. Updates on rules of the road and equipment, including but not limited to, safety belts and safe, efficient driving techniques under present day road and traffic conditions.

d. How to plan travel time and select routes for safety and efficiency.

e. How to make crucial decisions in dangerous, hazardous, and unforeseen situations.

f. The effects of physiological and physical problems that increase with age, their impact on driving, and how to compensate for these impairments, if possible.

3. Provide the department with all materials, manuals, and curriculum used in the course.

4. Provide an instructor preparation course to all instructor candidates. Only instructors who have completed this course may be employed by the sponsor.

5. Provide research documentation showing evidence of the effectiveness of the course. In the case of a course being new and having no documentation, evidence shall be submitted to the department when it becomes available.

6. Provide an address and telephone number where the course will be given and which may be disseminated to the public.

7. Designate an individual as representative of the course sponsor who is responsible for liaison with the department and include the representative's address and telephone number.

Course approval shall be valid for one year. At the end of one year a sponsor may make a renewal application on a form approved by the department. When approval is given, a certificate will be issued by the department to the sponsor upon approval of the course.

R708-20-4. Withdrawal or Denial of Approval.

Approval to conduct a course may be denied or withdrawn if it is determined by the department that a sponsor has failed to comply with any provisions of Section 31A-19a-211 or this rule.

R708-20-5. Monitoring of Course.

The sponsor will allow and cooperate with the department's monitoring of any curriculum or course instruction conducted for insurance reduction including the scheduling of on-site visits by department representatives to perform audits of course records, course curriculum, course instruction and the inspection of classroom facilities, in order to assure compliance of standards as prescribed by this rule.

KEY: motor vehicles, accident prevention
January 2, 1997 31A-19a-211
Notice of Continuation November 13, 1996

R746. Public Service Commission, Administration.
R746-405. Filing of Tariffs for Gas, Electric, Telephone, and Water Utilities.
R746-405-1. General Provisions.

A. Scope--The following rules for electricity, gas, telephone, and water utilities are designed to provide for:

1. the general form and construction of tariffs required by law to be filed with the Commission and open for public inspection,

2. the procedures for filing and publishing tariffs in Utah, and

3. the particular circumstances and procedures under which utilities may depart from their filed and effective tariffs.

B. Applicability--These rules apply to and govern utilities of the classes herein named, whether they begin service before or after the effective date of these rules, but they shall not affect a right or duty arising out of an existing rule or order in conflict herewith. The rules apply only to new tariff filings, and do not require the modification of tariffs which are effective on the date the rules are adopted. Each utility shall have on file with the Commission its current tariff. Each utility shall abide by the tariff as filed and approved by the Commission. The Commission at any time may direct utilities to make revisions or filings of their tariffs or a part thereof to bring them into compliance.

C. Definitions--

1. "Commission" means the Public Service Commission of Utah.

2. "Effective Date" means the date on which the rates, charges, rules and classifications stated in the tariff sheets first become effective, except as otherwise provided by statute. This date, in accordance with the statutory notice period, shall not be less than the 30th calendar day after the filed date, without the prior approval of the Commission. Unless otherwise authorized, rates shall be made effective for service rendered on or after the effective date.

3. "Filed Date" of tariff sheets submitted to the Commission for filing is the date the tariff sheets are date-stamped at the Commission's Salt Lake City office.

4. "Tariff" means the entire body of rates, tolls, rentals, charges classifications and rules collectively enforced by the utility, although the book or volumes incorporating the same may consist of one or more sheets applicable to distinct service classifications.

5. "Tariff Sheet" means the individual sheets of the volume constituting the entire tariff of a utility and includes the title page, preliminary statement, table of contents, service area maps, rates schedules and rules.

6. "Utility" means a gas, electric, telecommunications, water or heat corporation as defined in Section 54-2-1.

D. Separate Utility Services--

1. Utilities engaged in rendering two or more classes of utility services, such as both gas and electric services, shall file with the Commission a separate tariff covering each class of utility service rendered.

2. Utilities planning to jointly provide utility service shall designate one utility to file a joint tariff for the service with the other utility or utilities filing a concurrence with the joint tariff.

E. Withdrawal of Service--No utility of a class specified herein shall, without prior approval of the Commission, withdraw from public service entirely or in any portion of the territory served.

R746-405-2. Format and Construction of Tariffs.

A. Format--Tariffs shall be in loose-leaf form for binding in a stiff-backed book or books as required and consist of parts or subdivisions arranged in order set forth as follows:

1. Title:
"TARIFF"
Applicable to
Kind of
SERVICE
NAME OF UTILITY

2. Table of Contents: a complete index of numbers and titles of effective sheets listed in the order in which the tariff sheets are arranged in the tariff book. Table of contents sheets shall bear sheet numbers and be in the form set forth in Subsection R746-405-2(C).

3. Preliminary statement: a brief description of the territory served, types and classes or service rendered and general conditions under which the service is rendered. Preliminary sheets shall bear sheet numbers and be in the form set forth in Subsection R746-405-2(C). The preliminary statement shall clearly define the symbols used in the tariffs. For example:

a. "C" to signify changed listing, rule or condition which may affect rates or charges;

b. "D" to signify discontinued material, including listing, rate, rule or condition;

c. "I" to signify increase;

d. "L" to signify material relocated from or to another part of the tariff schedules with no change in text, rate, rule or condition;

e. "N" to signify new material including listing, rate, rule or condition;

f. "R" to signify reduction;

g. "T" to signify change in wording of text but no change in rate, rule or condition.

4. Service area maps: maps for telecommunication utilities shall clearly indicate the boundaries of the service area, the principal streets, other main identifying features therein, the general location of the service area in relation to nearby cities, major highways or other well-known reference points and the relation between service area boundaries and map references. Service area maps shall be approximately 8-1/2 x 11 inches in size, or folded to that size in order to fit within the borders of the space provided on tariff sheets. Maps for gas, water and electric utilities shall clearly indicate the boundaries of the service area.

B. Tariff Books--

1. Utilities shall constantly maintain their presently effective tariff at each business office open to the public.

2. Utilities shall remove canceled tariff sheets from their currently effective tariffs. Utilities shall permanently retain a file of canceled tariff sheets.

C. Construction of Tariffs for Filing--

1. The loose-leaf sheets used in tariffs shall be of paper stock not less than 16 lb. bond or of equal durability and 8-1/2

x 11 inches in size. Tariffs may be printed, typewritten or mimeographed or other similar process. Tariffs may not be hand-written. One side of a sheet only may be used and a binding margin of at least 1-1/8 inches at the left of the sheet.

a. The tariff sheets of each utility shall provide the following information:

i. the name of the utility;

ii. the sheet, or page number, along with information to designate whether it is the first version of the sheet or whether the sheet has been revised since it was originally issued. Sheets shall be numbered consecutively;

iii. the number of the advice letter with which the sheet is submitted to the Commission or the docket number if the sheet is filed in accordance with a report and order of the Commission;

iv. information to indicate the date the sheet was filed with the Commission and the date the sheet became effective.

2. Tariffs shall include the following information and as nearly as possible in the following order:

a. schedule number or other designation;

b. class of service, such as business or residential;

c. character of applicability, such as heating, lighting or power, or individual and party-line service;

d. territory to which the tariff applies;

e. rates, in tabular form if practicable;

f. special conditions, limitations, qualifications and restrictions. The conditions shall be brief and clearly worded to cover all special conditions of the rate. Amounts subject to refund shall be specified.

3. If a rate schedule or a rule is carried forward from one sheet to another, the word "Continued" shall be shown.

D. Submission of Tariff Sheets and Advice Letters--

1. Tariff sheets shall be transmitted by an advice letter or in response to a Commission order. A revised table of contents sheet shall be transmitted with each proposed tariff change, if the change requires alteration of the table of contents.

2. Ten copies of each submission of advice letter and tariff sheets shall be filed with the Commission. One copy of the tariff sheets bearing the "Filed Date" and "Effective Date" shall be returned to the utility to constitute the utility's official file copy.

3. Advice letters shall include the following:

a. sheet numbers and titles of the tariff sheets being filed, together with the sheet numbers of the sheets being canceled;

b. essential information as to the reasons for the filing;

c. dates on which the tariff sheets are proposed to become effective;

d. increases or decreases, more or less restrictive conditions, or withdrawals;

e. in the case of an increase authorized by the Commission, reference to the report and order authorizing the increase and docket number;

f. if the filing covers a new service not previously offered or rendered, an explanation of the general effect of the filing, including a statement as to whether present rates or charges will be affected, or service withdrawn from a previous user and advice whether the proposed rates are cost-based;

g. a statement that the tariff sheets proposed do not constitute a violation of state law or Commission rule. The filing of proposed tariff sheets shall of itself constitute the representation of the filing utility that it, in good faith, believes the proposed sheets or revised sheets to be consistent with applicable statutes, rules and orders. The Commission may, after hearing, impose sanctions for a violation hereof.

4. If authorized to file a notice that the effective tariff of a previous owner for the same service area is being adopted, the notice of adoption shall be submitted in the form of an advice letter.

5. Advice letters shall be numbered annually and chronologically. The first two digits represent the year followed by a hyphen and two or more digits, beginning with 01, as submitted by a utility for class of utility service rendered.

6. If a change is proposed on a tariff sheet, attention shall be directed to the change by an appropriate character along the right-hand margin of the tariff sheet using the symbols set forth in the preliminary statement.

7. At the time of making a tariff filing with the Commission, the utility shall furnish a copy of the advice letter and a copy of each related tariff sheet to interested parties having requested notification.

8. If the suspension is lifted by order of the Commission, the filing shall be resubmitted under a new advice letter number. If the suspension is made permanent by the Commission, the advice letter number shall not be used again.

E. Approval of Filed Tariff Sheets--

1. Utility tariffs may not increase rates, charges or conditions, change classifications which result in increases in rates and charges or make changes which result in lesser service or more restrictive conditions at the same rate or charge, unless a showing has been made before and a finding has been made by the Commission that the increases or changes are justified. This requirement does not apply to electrical or telephone cooperatives in compliance with Section 54-7-12(6), or by telecommunications utilities with less than 5,000 subscribers access lines in compliance with Section 54-7-12(7).

2. New tariff sheets covering a service or commodity not previously furnished or supplied, or revised tariff sheets, not increasing, or increasing pursuant to Commission order, a rate, toll, rental or charge, may be filed by the advice letter. Tariff sheets, unless otherwise authorized by the Commission either on complaint or on its own motion, shall become effective after not less than 30 calendar days after the filed date.

3. Upon application in the advice letter and for good cause shown, the Commission may authorize tariff sheets to become effective on a day before the end of the 30 day notice period.

4. The Commission may reject tariff sheets that do not conform to these rules, which have alterations on the face thereof or contain errors, or for other reasons as the Commission determines. Copies of rejected tariff sheets and accompanying advice letter shall be stamped "Sheet Rejected" in the appropriate places. The Commission shall return one copy of the rejected sheets to the utility, with a letter stating the reasons for its rejection. Rejected tariff sheets shall be retained in the utility's file of canceled and superseded sheets. Advice letter numbers of rejected filings shall not be reused.

F. Public Inspection of Tariffs--

1. Utilities shall maintain, open for public inspection at their main office, a copy of the complete tariff and advice letters

filed with the Commission. Utilities shall maintain, open for public inspection, copies of their effective tariffs applicable within the territories served by the offices.

2. Utilities shall post in a conspicuous place in their major manned business office, a notice to the effect that copies of the schedule of applicable rates in the territory are on file and may be inspected by anyone desiring to do so.

G. Contracts Authorized by Tariff--Tariff sheets expressly providing that a written contract shall be executed by a customer as a condition to the receipt of service, relating either to the quantity or duration of service or the installation of equipment, the contract need not be filed with the Commission. A copy of the general form of contract to be used in each case shall be filed with the tariff as provided in these rules.

This contract shall be subject to changes or modifications by the Commission.

KEY: rules, procedure, public utilities, tariffs, utility regulation

1987	**54-3-2**
Notice of Continuation April 3, 1998	**54-3-3**
	54-3-4
	54-4-1
	54-4-4
	54-7-12

R912. Transportation, Motor Carrier, Ports of Entry.
R912-76. Single Tire Configuration.
R912-76-1. Purpose.

The use of single tires on heavy vehicles has been indicated to be one of the factors damaging to pavements, in the form of increased fatigue and rutting. Rutting has been shown to have increased dramatically in recent years. Significant pavement rutting can result in an unsafe condition to the traveling public, and is very costly to correct, the Transportation Commission finds it in the best interest of the safety and convenience of the traveling public to limit and discourage the use of single tires in Utah.

R912-76-2. Authority.

Sections 72-1-102, 72-7-404, 72-7-406, 72-1-201.

R912-76-3. Provisions.

1. Tire loading on vehicles requiring an overweight or oversize permit shall not exceed 500 pounds per inch of tire width for tires eleven inches wide and greater, and 450 pounds per inch of tire width for tires less than eleven inches wide, as designated by the tire manufacturer on the side wall of the tire. Single axle loading shall not exceed 20,000 pounds, and tandem axle loading shall not exceed 34,000 pounds.

2. The use of single tires on any combination vehicle requiring an overweight or oversize permit shall not be allowed on single axles. A single axle is defined as one having more than eight feet between it and the nearest axle or group of axles on the vehicle.

3. Tire loading on permitted vehicles shall not exceed 600 pounds per inch of tire width as designated by the tire manufacturer on the sidewall.

D. Non-divisible loads may be exempt from these restrictions upon written approval from the Department.

E. No wheel on steering or castering axles shall exceed 600 pounds per inch of tire width.

F. In no case shall any tire loading exceed the tire manufacturer maximum load rating (existing Federal requirement).

G. Studies presently underway on the safety and pavement damage done by single tires may lead to modifications to this rule in the near future. This may lead to the total elimination or expanded use of single tires on other than steering or castering axles.

KEY: tires

1993	**72-1-102**
Notice of Continuation September 29, 1997	**72-7-404**
	72-7-406
	72-1-201

R994. Workforce Services, Workforce Information and Payment Services.
R994-204. Included Employment.
R994-204-201. General Definition.

The objective of Subsection 35A-4-204(2) is to explain when employment is covered under Utah law if an individual worked for one employer in more than one state. Unemployment insurance programs in all states use the parameters established in Section 35A-4-204.

R994-204-202. Service Is Localized in this State.

The service is considered to be localized in Utah if it is performed entirely within Utah. The service is also considered to be localized in Utah if performed both inside and outside of Utah, but the service outside of Utah is incidental to the service in Utah. The service is incidental if it is temporary or transitory in nature or consists of isolated transactions. The intent of the employer and employee will be used to determine whether the service is incidental to the service performed in Utah.

R994-204-203. Service Is Not Localized in Any State.

(1) If the service is not localized in any state but some of the service is performed by the individual in Utah, the entire service is covered in Utah if one of the following conditions apply:

(a) The Base of Operations is in Utah.

The individual's base of operations is in Utah. The "base of operations" is the place from which the employee starts work and to which he customarily returns for instructions from his employer, communications from customers, to replenish stocks or materials, to repair equipment or to perform any other function necessary in his trade or profession. The base of operations may be an individual's residence.

(b) The Place from Which Service is Controlled or Directed is in Utah.

If the individual has no base of operations or he does not perform any service in the state in which the base of operations is located, it is necessary to determine if any service is performed in the state from which the service is controlled or directed. The place from which the service is controlled or directed is the place at which the basic authority exists rather than the place at which a manager or foreman supervises the service.

(c) The Place of Residence is in Utah.

If the conditions in paragraphs a or b do not apply, it is necessary to apply the test of residence. Under this test, the service is covered in Utah provided the individual lives in Utah and performs some of his services in Utah.

(2) If the conditions listed above do not apply, the employer may elect to cover all of the individual's service in one state. This election must be made under the provisions for reciprocal coverage arrangements Section 35A-4-106.

R994-204-204. Outside Commissioned Salesmen Included.

(1) General Definition.

Under certain conditions described in Subsection 35A-4-204(2)(a)(i), services performed by an individual are in covered employment, even though they would otherwise be excluded under Subsection 35A-4-204(2)(i)(i)(B), the "outside commissioned salesman exclusion."

(2) Traveling or City Salesmen.

Services performed by salesmen excluded under Subsection 35A-4-204(2)(i)(i)(B) are considered to be in covered employment if ALL of the following conditions apply:

(a) The Salesman is Engaged on a Full-Time Basis.

A traveling or city salesman will be presumed to be engaged on a full-time basis in any quarter in which he devotes 80 percent or more of his working time and attention to the solicitation of orders for one principal. For example, an individual who works only 20 hours a week and spends 80 percent or more of that time working for one principal is engaged on a full time basis.

(b) The Salesman Solicits Orders From Wholesalers, Retailers, Contractors or Operators of Hotels and Restaurants.

The salesman must solicit orders from certain types of customers. Generally, the following types of customers are not included: manufacturers, schools, hospitals, churches, institutions, municipalities and state and federal governments. However, a clearly identifiable and separate business carried on through a unit of the school's or hospital's organization such as a bookstore or gift shop WOULD BE included as a "retailer." The salesman must solicit orders from the following types of customers:

(i) Wholesalers. Those who buy merchandise in comparatively large quantities and sell such merchandise in smaller quantities to jobbers, retailers, for the purpose of resale.

(ii) Retailers. Those who sell merchandise to the ultimate consumers.

(iii) Contractors. Those who, for a fixed price, undertake the performance of work on an independent basis, such as construction contractors and certain service organizations. These include, among others, electrical, plumbing, painting, building, window washing and delivery service contractors.

(iv) Operators of hotels, restaurants or other similar establishments. The phrase "other similar establishments" refers solely to establishments similar to hotels and restaurants and usually is limited to establishments whose primary function is the furnishing of food and/or lodging.

(c) The Salesman Takes Orders for Merchandise for Resale or Supplies Used in Business.

The orders the salesman is soliciting must be for merchandise for resale or supplies for use in the customer's business.

(i) Merchandise for resale. This includes goods, wares and commodities which ordinarily are the objects of trade and commerce and which are purchased for resale. This term refers specifically to tangible materials which do not lose their identities between the time of purchase and the time of resale.

(ii) Supplies for use in the customer's business operations. This means principally articles consumed in conducting or promoting the customers' businesses. Generally the term "supplies" includes all tangible items which are not "merchandise for resale" or capital items. Services such as radio time, advertising space, etc., are intangible items and not within the definition. However, calendars, advertising novelties, etc., used by the advertiser in his business constitute "supplies."

(d) The Salesman Meets the Following Additional Requirements.

(i) The contract of service contemplates that substantially all of the services are to be performed personally by the individual. This means that the services to which the contract relates will not be delegated to any other person by the individual who undertakes under the contract to perform such services; and

(ii) The individual does not have a substantial investment in facilities used in connection with the performance of his services. The facilities include equipment and premises available for the work but does not include such tools and equipment or clothing as are commonly provided by employees; and

(iii) The services are part of a continuing relationship with the person for whom the services are performed.

R994-204-205. Domestic Service Included in Employment.

(1) General Definition.

Section 35A-4-204(2)(k) shows when domestic services, which are exempt under Subsection 35A-4-205(1)(f), become subject employment.

(2) $1000 in a Calendar Quarter.

Domestic service is in employment if performed after December 31, 1977, in a private home, local college club or local chapter of a college fraternity or sorority for a person who paid cash remuneration of $1000 or more in a calendar quarter in the current calendar year or the preceding calendar year.

(3) All Remuneration is Reportable.

Once the $1000 cash test is met, all remuneration including cash and noncash payments such as board and room are reportable as wages.

R994-204-301. Independent Contractor - General Definition.

In order for a personal service to be excluded under Section 35A-4-204(3) of the Act, the service must be performed by an individual who is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the services performed, and the individual providing the services must be free from the control and direction of the employer with respect to that service. Those individuals who wish to be classified as independent contractors must clearly establish their status as independent contractors by taking affirmative steps that indicate an informed business decision has been made.

R994-204-302. Procedure.

(1) Section 35A-4-204(3) of the Act requires the employer to establish the excluded nature of the services "to the satisfaction of the Division".

(2) If the issue of an individual's status arises out of a claim for benefits, and there has been no prior status determination or declaratory order, a determination will be made on the basis of the best information available.

(3) If the issue of the status of an individual or class of workers arises out of an audit or request for declaratory order and there is no claim for benefits, the Department shall determine the status on the basis of the information presented by the employer, the individual, or such other information as the Department may gather through audit or investigation. An individual who is found to be an independent contractor by reason of an audit or declaratory order is not permitted to waive any right to unemployment benefits by filing a written consent to the determination pursuant to Section 63-46b-21(3)(b) while the service relationship with the employer continues. Such written consent is in violation of Section 35A-4-103(1)(c)(ii) of the Employment Security Act.

(4) If the issue of an individual's status arises out of a claim for benefits and there has been a prior audit determination or declaratory order determining that the individual or class of workers to which the individual belongs to be independent contractors, the Department will issue a monetary determination excluding the claimant's earnings as an independent contractor. The claimant has ten (10) days to protest the determination.

R994-204-303. Factors for Determining Independent Contractor Status.

(1) Services will be excluded under Section 35-4-312 if the service arrangement meets the requirements of that section of the Act and this rule. Special scrutiny of the facts is required to assure that the form of a service arrangement does not obscure the substance of the arrangement; that is, whether the individual is independently established in a like trade, occupation, profession or business and is free from control and direction. The factors listed in subsections 303(2)b) and 303(3)(b) of this section are exclusive, but are intended only as aids in the analysis of the facts of each case. The degree of importance of each factor varies depending on the occupation and the factual context in which the service is performed. Some factors do not apply to certain occupations and, therefore, should not be given any weight.

(2) Independently Established.

(a) An individual will be considered customarily engaged in an independently established trade, occupation, profession, or business if the individual is, at the time the service is performed, regularly engaged in a trade, occupation, profession, or business of the same nature as the service performed, and the trade, occupation, profession, or business is established independently of the alleged employer. In other words, an independently established trade, occupation, profession, or business is created and exists apart from a relationship with a particular employer and does not depend on a relationship with any one employer for its continued existence.

(b) The following factors, if applicable, will be used as aids in determining whether an individual is customarily engaged in an independently established trade or business:

(i) Separate Place of Business. The individual has his own place of business separate from that of the employer.

(ii) Tools and Equipment. The individual has a substantial investment in the tools, equipment, or facilities customarily required to perform the services. "Tools of the trade" such as those used by carpenters, mechanics, and other trades or crafts, do not necessarily demonstrate independence.

(iii) Other Clients. The individual regularly performs services of the same nature for other customers or clients and is not required to work full time for the employer.

(iv) PROFIT OR LOSS. The individual is in a position to realize a profit or loss through his independently established business activity.

(v) Advertising. The individual advertises his services in

telephone directories, newspapers, magazines, or by other methods clearly demonstrating that he holds himself out to the public to perform the services.

(vi) Licenses. The individual has obtained any required and customary business and trade or professional licenses.

(vii) Business Tax Forms. The individual files self-employment and other business tax forms required by the Internal Revenue Service and other tax agencies.

(c) If an employer proves to the satisfaction of the department that the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as the service in question, there will be a rebuttable presumption that the employer did not have the right of or exercise direction or control over the service.

(3) Control and Direction.

(a) When an employer retains the right to control and direct the performance of a service, or actually exercises control and direction over the individual who performs the service, not only as to the result to be accomplished by the work but also as to the manner and means by which that result is to be accomplished, the individual is an employee of the employer for the purposes of the Act.

(b) The following factors, if applicable, will be used as aids in determining whether an employer has the right of or exercises control and direction over the service of an individual:

(i) Instructions. An individual who is required to comply with other persons' instructions about how the service is to be performed is ordinarily an employee. This factor is present if the employer for whom the service is performed has the right to require compliance with the instructions.

(ii) Training. Training an individual by requiring an experienced person to work with the individual, by corresponding with the individual, by requiring the individual to attend meetings, or by using other methods, indicates that the employer for whom the service is performed expects the service to be performed in a particular method or manner.

(iii) Pace or Sequence. A requirement that the service must be provided at a pace or ordered sequence of duties imposed by the employer indicates control or direction, but the coordinating and scheduling of the services of more than one service provider does not.

(iv) Work on Employer's Premises. A requirement that the service be performed on the employer's premises generally indicates that the employer for whom the service is performed has retained a right to supervise and oversee the manner in which the service is performed, especially if the service could be performed elsewhere.

(v) Personal Service. A requirement that the service must be performed personally and may not be assigned to others generally indicates the right to control or direct the manner in which the work is performed.

(vi) Continuous Relationship. A continuous service relationship between the individual and the employer indicates that an employer-employee relationship exists. A continuous relationship may exist where work is performed regularly or at frequently recurring although irregular intervals. A continuous relationship generally does not exist where the individual is contracted to complete specifically identified projects, even though the service relationship may extend over a significant period of time.

(vii) Set Hours of Work. The establishment of set hours of work by the employer, or a requirement that the individual must work full-time, indicates control.

(viii) Method of Payment. Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying progress billings as part of a fixed price agreed upon as the cost of a job.

R994-204-401. Safe Haven - General Definition.

The Administrative Procedures Act, Section 63-46B-21, permits any person to request that the Department issue a declaratory order determining the applicability of the Employment Security Act, a Commission rule, or order, to specific circumstances. Specifically, an employer may request a declaratory order determining the status of workers; that is, are they employees or independent contractors. Declaratory orders and audit findings determine only whether the employer is liable to pay contributions on wages paid to the workers in question. The "safe haven" provision provides a means by which the employer may rely on official determination of the Department pertaining to the applicability of Section 35A-4-204(3) of the Act. The provision allows the employer to obtain an official determination for contributions purposes, while preserving the worker's right to challenge that determination at a more appropriate time, when the work relationship has ended and a claim for benefits has been filed.

R994-204-402. Procedure.

(1) If the issue of the status of an individual or class of workers arises out of an audit or request for declaratory order and there is no claim for benefits pending at the time, the Department shall determine the status on the basis of the information presented by the employer, the individual, or such other information as the Department may gather through audit or investigation.

(2) An individual whose status is determined as a result of an audit or declaratory order shall not be permitted to file a written consent to the determination pursuant to Section 63-46B-21(3)(b) while the service relationship with the employer continues, and the Department will consider such a consent to be in violation of Section 35A-4-103(1)(c)(ii) of the Employment Security Act.

(3)(i) If the issue of an individual's status arises out of a claim for benefits and there has been a prior audit determination or declaratory order determining the status of the individual or a class of workers to which the individual belonged, the Department will issue a notice as part of the monetary determination, denying use of the individual's independent contractor earnings as wage credits for the base period, on the basis of the prior status determination. The individual may file a written protest of the determination within 10 days after the local office has notified him of the determination. Any protest will be referred to Central Office Claims for review.

(ii) Upon receipt of a protest filed under Section 402(3)(i), the Department will review the status of the individual. On the basis of its review, the Department may affirm the original determination or issue a new determination if there has been a

change of facts in the work relationship. Either the individual or the employer may appeal the Department's decision.

R994-204-403. Employer Reliance on Official Determination.

When an employer receives a declaratory order or other official determination concluding that a worker or class of workers appears to be customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of hire, and is free from the control and direction of the employer, the employer shall have no liability to pay unemployment contributions on compensation paid to the worker, except as provided in Section 404 of this rule.

R994-204-404. Effect of New Determination on Employer.

If a new determination by the Department, an Administrative Law Judge, or the Board of Review holds that the status of an individual or class of workers to which the individual belonged is that of employee for purposes of the Employment Security Act, the employer shall be liable to pay unemployment contributions on all wages paid to workers in the class to which the individual belonged, from the beginning of the calendar quarter in which the new determination is made. In addition, the employer shall also be liable to pay contributions on any wages used by a claimant for purposes of establishing any claim for benefits affected by the new determination.

KEY: unemployment compensation, employment tests, independent contractor*
November 18, 1996 35A-4-204
Notice of Continuation April 4, 2000

R994. Workforce Services, Workforce Information and Payment Services.

R994-205. Exempt Employment.

R994-205-101f. Domestic Service Excluded.

(1) General Definition.

Subsection R994-205-101f defines domestic services which are exempt under the Act, provided they are not included under Subsection 35A-4-204(2)(k).

(2) Domestic Service.

(a) Services Which Are Domestic Services.

Domestic services include services of a household nature in or about a private home, local college club, or local chapter of a college fraternity or sorority, performed by individuals including: cooks, maids, baby-sitters, handymen, gardeners, and chauffeurs of automobiles for family use. In order to be exempted, the domestic services must be performed by an individual in or about the private home, local college club, or local chapter of a college fraternity or sorority of the person employing him.

(b) Services Which are Not Domestic Services.

Some examples of services which are not domestic services are secretarial services performed in a private home and services in relation to remodeling or building a private home, local college club, or local chapter of a college fraternity or sorority.

(3) Private Home.

A private home is a fixed place of abode of an individual or family; this may include a dwelling unit in an apartment building or hotel.

(4) Local College Club or Local Chapter of a College Fraternity or Sorority.

A local college club does not include an alumni club or chapter.

(5) Services Not Exempt.

Services of a household nature if performed in or about rooming or boarding houses, hotels, hospitals, commercial offices or for home-owner's associations are not exempt. Services not of a household nature, regardless of where performed, are not exempt.

R994-205-102h. Exempted Service: Family Service.

(1) General Definition.

Family service is exempt under the Act only if a required family relationship exists between the employee and all partners. Services performed in the employ of a corporation are not exempt.

(2) Family Relationship Requirement.

(a) One of the following relationships must exist for family service to be exempt:

(i) an individual employed by his or her spouse,

(ii) a parent employed by his or her son or daughter,

(iii) a child under the age of 21 employed by his or her parent regardless of his marital status.

(b) In the parent-child employment situation, the exempt family relationship is met even if the child is an adopted child, stepchild, or foster child; the foster child, however, must be living with the foster parent.

(3) Examples of Family Relationships Which Are or Are Not Exempt.

A required family relationship, not necessarily the same relationship, must exist between the employee and each member of the employing unit. Examples are:

(a) A woman who is employed by a partnership composed of her husband and her son is exempt from "employment."

(b) A woman who is employed by a partnership composed of her husband and his brother is not exempt from "employment" because the required family relationship between the woman and her brother-in-law does not exist.

(c) A man who is employed by a partnership composed of his wife and his son-in-law is not exempt from "employment" because the required family relationship between the man and his son-in-law does not exist.

R994-205-103j. Exempted Service: Casual Labor.

(1) General Definition.

Casual labor is exempt under the Act only if it is not in the course of the employing unit's trade or business. Casual labor does not apply to domestic service exempt under Subsection 35A-4-205(1)(f).

(2) Casual Labor.

Services performed by an individual for an employing unit is casual labor unless:

(a) cash remuneration for such service is $50 or more in a calendar quarter; and

(b) the individual performs such service on each of 24 days during the calendar quarter or 24 days during the preceding calendar quarter.

(3) Not in the Course of the Employing Unit's Trade or Business.

Services "not in the course of the employing unit's trade or business" include services that do not promote or advance the trade or business; for example, services performed in connection with the employer's hobby or repairs to the employer's private home. Casual labor performed by an individual for a property owner in regard to building or remodeling the owner's home is exempt under Subsection 35A-4-205(1)(j). Services for a corporation will always be in the course of business.

R994-205-104n. Exempted Service: Commission Insurance Agents.

(1) General Definition.

"Employment" does not include services performed as an insurance agent if remuneration for such services is solely by way of commission.

(2) Services Performed as an Insurance Agent.

Services performed by an individual as an insurance agent are exempt if ALL SUCH services are paid solely by way of commission. For example, if this individual works for an insurance company both as an insurance agent and an accountant, is paid for services as an insurance agent by way of commission and paid a salary for the accounting services, the commissions are excluded from employment and the salary for the accounting services is included. If the payment for all services including commissions and salary, is for the same pay period, the "included and excluded service" provision of Subsection 35A-4-205(2) must be applied.

(3) Solely by Way of Commission.

(a) If any part of the remuneration for services as an insurance agent is a salary, all of these services are considered

to be employment and the total remuneration (salary and commission) is included.

(b) If the individual performing services as an insurance agent is guaranteed a minimum salary for any pay period in which his commissions are less than the guaranteed minimum, his earnings are included when he is paid the guaranteed salary. In any pay period in which his commissions equal or exceed the guaranteed salary, his earnings are considered to be solely by way of commission and are excluded.

(c) If the individual performing services as an insurance agent is given advances against future commissions and he is required to repay any advances which exceed the commissions, the advances against future commissions are considered to be remuneration solely by way of commission and are excluded.

R994-205-105r. Exempted Service: Real Estate Agents.

(1) General Definition.

"Employment" does not include services as a licensed real estate agent if remuneration for such services is solely by way of commission.

(2) Services Performed as a Licensed Real Estate Agent.

Services performed by an individual as a licensed real estate agent are exempt if ALL services performed are paid solely by way of commission. For example, if this individual works for a real estate company both as a real estate agent and an accountant, is paid for services as a real estate agent by way of commission and paid a salary for the accounting services, the commissions are excluded from employment and the salary for the accounting services is included. If the payment for all services including commissions and salary, is for the same pay period, the "included and excluded service" provision of Subsection 35A-4-205(2) must be applied.

(3) Solely by Way of Commission.

(a) If any part of the remuneration for services as a real estate agent is a salary, all of these services are considered to be employment and the total remuneration including salary and commission is included.

(b) If the individual performing services as a real estate agent is guaranteed a minimum salary for any pay period in which his commissions are less than the guaranteed minimum, his earnings are included when he is paid the guaranteed salary. In any pay period in which his commissions equal or exceed the guaranteed salary, his earnings are considered to be solely by way of commission and are excluded.

(c) If the individual performing services as a real estate agent is given advances against future commissions and he is required to repay any advances which exceed the commissions, the advances against future commissions are considered to be remuneration solely by way of commission and are excluded.

R994-205-201. Included and Excluded Service.

(1) General Definition.

When some of an individual's services performed for the person employing him during a pay period are included and some excluded from employment, all the services are considered to be included or excluded for that pay period. Whether all the services are considered to be included or excluded depends on the time spent in each activity.

(2) Time Spent in a Pay Period.

(a) If 50% or more of an individual's time in the employ of a particular person is spent in performing services which constitute employment, all the services are considered to be employment.

(b) This 50% test must be applied to each pay period. An individual could have all services performed by him included in one period and excluded in another.

(3) Employer Must Verify Time Spent.

In order to have all services performed by an individual excluded, the employer must show to the satisfaction of the Department that less than 50% of the time spent in any pay period is for services which constitute employment.

(4) Pay Period.

Subsection 35A-4-205(2) does not apply if there is no regular pay period, the pay period covers more than 31 consecutive days or there are separate pay periods for the included and excluded services.

KEY: unemployment compensation, employment tests
1990 35A-4-205
Notice of Continuation April 4, 2000

R994. Workforce Services, Workforce Information and Payment Services.

R994-206. Agricultural Labor.

R994-206-101. General Definition.

(1) Subsection 35A-4-206 defines the term "agricultural labor." Generally, agricultural labor is exempt under Subsection 35A-4-205(1)(e) of the Act unless it is covered under Subsection 35A-4-204(2)(j). Subsection 35A-4-204(2)(j) covers larger agricultural employers based on wages paid or number of individuals employed.

(2) Definition of Terms.

The terms used in Section R994-206-101 are defined as follows:

(a) Agricultural Commodities.

Agricultural commodities include livestock, bees, poultry, fur-bearing animals, wildlife and all crops such as fruits, nuts, vegetables, grains and other commodities grown in the soil or other growth mediums for use or profit.

(b) Horticultural Commodities.

Horticultural commodities are flowers and nursery products such as sod, fruit trees, shade trees, Christmas trees, ornamental plants and shrubs.

(c) Raising and Harvesting.

Raising includes: planting the seeds, watering or irrigating, applying insecticide or fertilizer and otherwise caring for the commodity prior to harvesting. In regard to livestock, bees, poultry, fur-bearing animals and wildlife, raising includes: caring for, feeding, shearing, breeding, training and management. Harvesting includes: picking, cutting, threshing, shucking corn, baling hay, and hulling nuts. Horticultural commodities are harvested when they are made available for sale.

(d) Farm.

A farm is any place used mainly for raising agricultural or horticultural commodities such as a ranch, orchard, nursery, greenhouse or other similar structure.

(3) Agricultural Labor.

"Agricultural labor" means any service performed in any one of the following:

(a) On a farm, in the employ of any person in connection with:

(i) cultivating the soil, which includes plowing, dragging and fertilizing, or

(ii) raising or harvesting any agricultural or horticultural commodity.

(b) In the employ of the owner or operation of a farm, if the major part of the service is performed on a farm, in connection with:

(i) the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment (this includes clearing land, leveling land, selling agricultural commodities raised by the operator and services performed by painters, mechanics, farm supervisors and bookkeepers, provided the individual is not an employee of another firm hired by the farm operator.); or

(ii) salvaging timber or clearing land of brush or other debris left by a hurricane, storm, flood or other natural disaster.

(c) In the employ of any person in connection with:

(i) the production or harvesting of agricultural commodities defined in the Federal Agricultural Marketing Act, Title 7 USC Section 1621 et seq. (These commodities are limited to crude gum also known as oleoresin, from a living tree and gum spirits of turpentine and gum rosin processed from crude gum by the original producer of the crude gum.); or

(ii) the ginning of cotton; or

(iii) the operation or maintenance of ditches, canals, reservoirs or water ways if not owned or operated for profit and used primarily for farming purposes.

(d) In the employ of the operator of a farm or group of operators of farms who produce more than one-half of the commodity and perform services with respect to such commodity in its unmanufactured state in:

(i) handling, planting, drying, packing, packaging, processing, freezing, grading, or storing the commodity; however, services performed in connection with commercial canning or commercial freezing do not constitute agricultural labor; or

(ii) delivery to storage or to market or to a carrier for transportation to market of the commodity. However, services performed in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or in connection with the wholesaling and retailing of the commodity do not constitute agricultural labor. The selling activity, however, is agricultural when it is performed on the farm.

(4) Examples of the Application of the Definition of Agricultural Labor.

(a) Raising and Selling.

Services in connection with raising agricultural or horticultural commodities are agricultural labor. However, if this business also sells the commodity, the selling activity is not agricultural labor unless performed on the farm.

(b) Agricultural Labor Included and Excluded Services.

If the same individual performs both agricultural and nonagricultural labor, his entire service will be considered to be agricultural labor if 50% or more of his time in a pay period was spent in agricultural labor. For reference see Subsection 35A-4-205(2).

(c) Poultry Hatchery.

Poultry hatchery services are agricultural labor provided they are performed on the farm or in the employ of a farm operator or group of operators who produced more than one-half the eggs. Services for a commercial hatchery that is not part of a farm that raises poultry are not agricultural labor.

(d) Raising Livestock.

Raising livestock and related activities performed on a farm are agricultural labor. Services in connection with livestock held, cared for and fed in a feed lot over an extended period of time to make an appreciable weight increase are agricultural labor. However, operating a stable or stud farm where no animals are raised is not agricultural labor. Services in connection with racing horses, using livestock in rodeos, exhibiting livestock and training livestock for these purposes are not agricultural labor when not performed on the farm where the animals were raised.

(e) Forestry, Lumbering and Landscaping.

Services performed in forestry, lumbering and landscaping are not agricultural labor.

KEY: unemployment compensation, employment tests
1990 35A-4-206
Notice of Continuation April 4, 2000

R994. Workforce Services, Workforce Information and Payment Services.
R994-315. Centralized New Hire Registry Reporting.
R994-315-101. Authority.

This rule is authorized by 35A-7-101 et seq. Utah Code Ann. 1953.

R994-315-102. Definitions.

In addition to definitions included in 35A-7-102, this rule makes the following definition:

(1) Multi-state Employer: A multi-state employer is defined as an employer who has employees in two or more States and who transmits new hire reports magnetically or electronically.

R994-315-103. Reporting Formats.

Employers may submit information by paper, or by magnetic tape, cartridge, or diskette. Submittals should not be duplicated.

(1) Paper

Employers may mail or fax copies of any one of the following:

(a) the Utah New Hire Registry Reporting Form (form 6)

(b) the employee's W-4 (Employee's Withholding Allowance Certificate), the worksheet portions are not necessary.

(c) computer printouts or other printed information that provides all six of the mandatory data elements required by 35A-7-104 (1).

(2) Magnetic Media

Employers may submit their new hire information on magnetic tape, cartridge, or diskette. Magnetic media must be submitted according to specifications approved by the Department.

R994-315-104. Multi-state Employers.

(1) Multi-state employers have the option to report all new hires to a single state, chosen by the employer, in which the employer has employees. To exercise this option, the employer must designate one state for reporting new hires, transmit the report magnetically or electronically, and notify the Secretary of Health and Human Services in writing.

The letter of request should include the following information:

(a) Employer Federal ID Number (FEIN).

(b) Any other FEIN's under which the employer does business.

(c) Employer Company name, address and telephone number.

(d) The state to which the employer will report all workers.

(e) A list of states in which the employer employs workers.

(f) Name and phone number of person responsible for providing data.

R994-315-105. Waiver of Penalty for Failure to Report.

(1) An employer that fails to report the hiring or re-hiring of an employee in a timely manner is subject to a civil penalty of $25 for each such failure in accordance with Section 35A-7-106. The $25 penalty will be waived if the employer can show good cause for failure to provide the required new hire report(s). Good cause may be established if the employer was prevented from filing a new hire report due to circumstances which were compelling and reasonable or beyond its immediate control. Payment of the $25 penalty does not relieve the employer from the responsibility of filing the required new hire report(s).

KEY: new hire registry
April 21, 2000 **35A-7-101 et seq.**
42 U.S.C. 654(a) et seq.
Pub. L. No. 104-193